

U.S. COPYRIGHT OFFICE

HEARING
BEFORE THE
SUBCOMMITTEE ON
COURTS, INTELLECTUAL PROPERTY,
AND THE INTERNET
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS
SECOND SESSION

SEPTEMBER 18, 2014

Serial No. 113-116

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

U.S. GOVERNMENT PRINTING OFFICE
89-810 PDF

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Printing Office
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U.S. COPYRIGHT OFFICE

THURSDAY, SEPTEMBER 18, 2014

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY,
AND THE INTERNET

COMMITTEE ON THE JUDICIARY

Washington, DC.

The Subcommittee met, pursuant to call, at 2:14 p.m., in room 2141, Rayburn Office Building, the Honorable Howard Coble, (Chairman of the Subcommittee) presiding.

Present: Representatives Coble, Marino, Chabot, Issa, Holding, Collins, DeSantis, Nadler, Conyers, Chu, DelBene, Jeffries, and Lofgren.

Staff Present: (Majority) David Whitney, Counsel; Olivia Lee, Clerk; (Minority), Norberto Salinas, Counsel; and Jason Everett, Counsel.

Mr. COBLE. The Subcommittee on Courts, Intellectual Property, and the Internet will come to order.

Without objection, the Chair is authorized to declare recesses of the Subcommittee at any time.

We welcome our witness today, and we will introduce her at a subsequent time, imminently.

With that in mind, let me give my opening statement.

Within Congress, the Judiciary Committee is responsible—strike that.

I want to apologize to all of you for our belated commencement time. We had votes on the floor. That is why we are running about 10 minutes late.

Within Congress, the Judiciary Committee is responsible for overseeing and legislating on matters that derive from or are substantially affected by the Constitution's grant of authority under Article 1, Section 8, Intellectual Property Clause. In the context of today's hearing, there are two points I want to make regarding this authority.

First, the Constitution's drafters didn't merely give Congress the authority to grant exclusive rights to authors and inventors; they gave the Congress the responsibility to execute it by literally prescribing the means of securing these exclusive rights.

Secondly, since the 19th century, the Congress has sought to administer and secure these rights through a design that has largely

been left unchanged, a statutorily created Copyright Office housed in the Library of Congress.

Today's hearing will focus on the operations of the U.S. Copyright Office. In doing so, we will not merely gaze backwards to assess how the Office has constructed its business in recent years. We will look forward and begin to examine the more difficult and substantial questions of whether we are equipping the Office to succeed and ask what steps we need to take to position it to promote the interests of authors and the public and perform its statutory responsibilities in the 21st century.

From time to time, we need to step back and see not only if we should make changes to substantive law but also whether we should continue to do things as we have done them for years. On the substantive side, the Committee is engaged in an ongoing and historic comprehensive review of copyright law. On the process and operations side, we need to begin a complementary effort to ensure that we are considering how to administer the law and whether we are furthering its constitutional and statutory objectives on a substantial basis.

Over the years, I think the location of the Office in the Library of Congress served largely to serve the objectives and interests of both organizations and the American people as well, but we live in a dynamic and increasingly digital environment and it is clear that the Office's structure was designed for an analog era or an analog age. Today, the Office serves as a repository for vital information that helps to promote and advance the interest of free expression and has an epicenter of commercial activity that educates and entertains not only Americans but citizens throughout the world. This will only increase tomorrow.

Congress has looked to alternatives in the past. In the mid-1990's, we contemplated reorganizing the PTO as a government corporation and one of the proposals reviewed would have been to combine the Copyright Office with the PTO. We subsequently adopted reforms to the PTO organization but put aside the question of whether the Copyright Office and, more importantly, the principles we seek to advance through the institution of the Office would be of benefit therefore.

The Subcommittee has been concerned about the Office's ability to perform its functions and duties for some time. It is an open question whether the Office has the support it needs from the Library, and I don't mean to be in any way critical of the Library. But nonetheless, I think that is the case. Its operations and function are 24/7 as a marketplace requires and the American people deserve.

This discussion needs to be a public one, and it needs to be approached with an open mind, with the clear objective of building a 21st century digital Copyright Office.

We look forward to receiving the testimony of Ms. Pallante, the United States Register of Copyrights. But before she begins I want you to know that she recently delivered an important address entitled "The Next Generation of Copyright Office: What It Means and Why It Matters." In those remarks, she reported on the progress the Office has made in modernizing its operations under existing authorities and made recommendations for needed improvement.

Without objection, I ask that we include a copy of that speech in the record.

[The information referred to follows:]

**THE NEXT GENERATION COPYRIGHT OFFICE:
WHAT IT MEANS AND WHY IT MATTERS**

*by MARIA A. PALLANTE**

INTRODUCTION

Tonight I would like to discuss the improvements that some of you have been calling for with respect to the core services and technical capacity of the U.S. Copyright Office, many of which I agree with and all of which deserve further consideration. I will also report on the conclusions of some of the special projects that my colleagues and I conducted from October 2011 through October 2013 for the purpose of assessing deficiencies and vulnerabilities of the Office and preparing it for future challenges. To the many stakeholders who engaged with us on issues of law, business, and technology during this process, we express our gratitude and appreciation.

Where possible, we have already adopted new programs. For example, in the past year, in the category of supplementing our lean staff, we commenced research partnerships with law schools (beginning with Stanford), announced the Abraham Kaminstein Scholar in Residence Program (for professors and other substantive experts) and the Barbara A. Ringer Copyright Honors Program (for law school graduates).¹

In the category of education and training, we launched the Copyright Matters public education program (focused on copyright law and marketplace developments),² established the internal Copyright Academy (for

*Maria A. Pallante is Register of Copyrights and Director of the U.S. Copyright Office. This is a longer version of the Eleventh Annual Christopher A. Meyer Memorial Lecture delivered on November 20, 2013 at George Washington University Law School and co-sponsored by the Copyright Society of the USA.

Mr. Meyer was a Policy Planning Advisor at the Copyright Office from 1983 to 1987, in addition to holding other positions in the federal government and private sector. A recognized expert in domestic and international copyright law, he was a partner with the Washington firm of Meyer & Klipper, PLLC at the time of his untimely death in 1999.

The author would like to acknowledge the foundational work of her predecessor, Marybeth Peters (Register 1994–2010), who implemented the first generation of electronic registration in 2008.

¹ *U.S. Copyright Office Announces Ringer Fellowships and Kaminstein Scholars, Names Brauneis of The George Washington University, U.S. COPYRIGHT OFFICE NEWSNET*, no. 516 (Sept. 5, 2013), <http://www.copyright.gov/news.net/2013/516.html>.

² The Office has hosted a dozen Copyright Matters events since 2011, including Copyright & The American Songwriter; Copyright Conversations with the

purposes of much-needed staff training); undertook a major revision of registration standards and practices (the *Compendium of Copyright Office Practices*, Third Edition); and began to reorganize business units to address certain under-resourced areas of the Copyright Office (including legal work, digital file security, metadata standards, database functionality, and public information services).

Other improvements will take more time. That is, while the Copyright Office should and will continue to effectuate whatever progress it can under its existing structure and authority, some projects are more systemic and will require significant resources and/or congressional direction. Indeed, if stakeholders are largely correct in their assessments and advice — and I believe they are — we may well require a number of paradigm shifts in the years ahead. These shifts would affect several primary services under the copyright law, including: how the Office examines creative works and secures deposit materials; how it registers claims to copyright; how it records assignments, security interests, and other commercially important documents; how it manages technology and otherwise interacts with the broader marketplace; and how it is funded.

While no one has suggested that investing in the Copyright Office would be inexpensive, people seem to agree that it would be widely beneficial. This came through during our public comment process. For example, BMI suggested that it would be useful for the Office to collect and incorporate short digital samples of musical works as part of its registration records, to help people identify copyright ownership.³ The American Society of Media Photographers and the Graphic Artists Guild suggested it would be helpful for the Office to invest in image recognition technologies to help people find works of visual art.⁴ The Association of American Publishers said it would be helpful to the book publishing industry if the Office adopted commercially successful metadata standards for digital

United Kingdom; and Nimmer on Copyright: Celebrating 50 Years, to name a few. *See Copyright Matters Lecture Series*, U.S. COPYRIGHT OFFICE, <http://www.copyright.gov/copyrightmatters.html>.

³ Broadcast Music, Inc. (“BMI”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 2 (May 21, 2013). *See* Notice of Inquiry, Technological Upgrades to Registration and Recordation Functions, 78 Fed. Reg. 17,722 (Mar. 22, 2013). The comments the Office received in response to this Notice of Inquiry are available on the Copyright Office website, http://www.copyright.gov/docs/technical_upgrades/comments.

⁴ American Society of Media Photographers (“ASMP”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 5 [hereinafter “ASMP Comments”]; Graphic Artists Guild (“GAG”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 10 (May 21, 2013).

content, such as ONIX.⁵ And SoundExchange said that if the Copyright Office could develop APIs,⁶ then rights management organizations and aggregators could create innovative applications for collecting and disseminating information regarding copyrighted content across the supply chain.⁷ In a publication about the Copyright Office released in 2010, Public Knowledge observed that “[t]he long term cost savings created by an easy-to-use, comprehensive registry should easily outweigh the costs associated with its creation.”⁸

I. THE WORLD AROUND US

[N]early every copyright-related industry sector is in the midst of profound changes It should not come as a surprise that the rapid changes happening in the copyright world might require change to how and what the Copyright Office does.

- Members of the Copyright Principles Project, January 1, 2010⁹

As many have observed, the Copyright Office sits at the center of a considerable copyright marketplace, one that seems to become more dynamic and more sophisticated every year. Consumers of all ages are demanding the ability to both access and share creative works (books, games, movies, videos, photographs, and music) in their homes and through a variety of mobile devices and other platforms. The copyright industries are investing not only in the content itself, but also in the software and hardware to deliver it securely.¹⁰ Technology companies

⁵ Association of American Publishers (“AAP”), *Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry* at 8 (May 21, 2013) [hereinafter “AAP Comments”].

⁶ An API (or application programming interface) is a set of data structures, protocols, and other building blocks that facilitate the functionality of web-based software applications, and provide a channel for applications to work with each.

⁷ SoundExchange, Inc., *Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry* at 6 (May 21, 2013) [hereinafter “SoundExchange Comments”].

⁸ See MICHAEL WEINBERG ET AL., PUBLIC KNOWLEDGE, A COPYRIGHT OFFICE FOR THE 21ST CENTURY: RECOMMENDATIONS TO THE NEW REGISTER OF COPYRIGHTS 10 (2010), available at <http://www.publicknowledge.org/files/docs/ACopyrightOfficeforthe21stCentury.pdf>.

⁹ Pamela Samuelson & Members of the Copyright Principles Project (“CPP”), *The Copyright Principles Project: Directions for Reform*, 25 BERKELEY TECH. L.J. 1175, 1202 (2010).

¹⁰ See, e.g., STEPHEN E. SIWEK, ECONOMISTS INCORPORATED, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2013 REPORT 2 (2013) (prepared for the International Intellectual Property Alliance (“IIPA”)), available at http://www.iipa.com/pdf/2013_Copyright_Industries_Full_Report.PDF (stating that the value of the core copyright industries to U.S. gross domestic product (“GDP”) exceeded \$1 trillion (\$1,015.6 billion) in 2012, account-

continue to expand their businesses, making delivery over the Internet faster, more interactive, and more global than ever before.¹¹

Earlier this year, I offered my thoughts as to why marketplace developments like these may require Congress to consider additional protections, remedies, and clarifications in the law for the benefit of most everyone in the ecosystem, including authors, distributors, and consumers.¹² While the courts are indispensable to the evolution of copyright law, and while they frequently perform yeomen's work in applying the law to the facts of new technologies, Congress remains uniquely situated and authorized to weigh the larger themes of copyright policy, including the ongoing viability of the law and the protection of the public interest.

Part of the equation involves assessing the relative state of the Copyright Office and its ability to administer the legal provisions of a twenty-first century law. But how does a government institution like the Copyright Office stay relevant to the public interest that it serves, particularly when its mission and services also support a business environment as dy-

ing for 6.48% of the U.S. economy, and that the value of total copyright industries to U.S. GDP exceeded \$1.7 trillion (\$1,765 billion), accounting for 11.25% of the U.S. economy); ECON. & STATISTICS ADMIN. & U.S. PATENT AND TRADEMARK OFFICE, INTELLECTUAL PROPERTY AND THE U.S. ECONOMY: INDUSTRIES IN FOCUS at v (2013), *available at* <http://www.esa.doc.gov/sites/default/files/reports/documents/ipandtheuseconomyindustriesinfocus.pdf> (noting that intellectual property rights "support innovation and creativity in virtually every U.S. industry").

¹¹ See Chris Williams, Davide Strusani, David Vincent & David Kovo, *The Economic Impact of Next-Generation Mobile Services: How 3G Connections and the Use of Mobile Data Impact GDP Growth*, in THE GLOBAL INFORMATION TECHNOLOGY REPORT 2013: GROWTH AND JOBS IN A HYPERCONNECTED WORLD 77, 77 (Beñat Bilbao-Osorio et al. eds., 2013) (prepared for the World Economic Forum), *available at* http://www3.weforum.org/docs/WEF_GITR_Report_2013.pdf (noting that the continued evolution of Internet-based distribution systems is having an "unprecedented" impact on the U.S. and global economy); THOMAS ROGERS & ANDREW SZAMOSSZEGI, CAPITAL TRADE INC., FAIR USE IN THE U.S. ECONOMY: ECONOMIC CONTRIBUTION OF INDUSTRIES RELYING ON FAIR USE 10 (2011) (prepared for the Computer & Communications Industry Association ("CCIA")), *available at* <http://www.cccanet.org/wp-content/uploads/library/CCIA-FairUseintheUSEconomy-2011.pdf> (noting that "[t]he advent of the Internet and networking technology . . . has been widely credited with reviving U.S. productivity growth after two decades of below-trend productivity").

¹² See *The Register's Call for Updates to U.S. Copyright Law: Hearing Before the Subcomm. on Courts, Intellectual Prop. & the Internet of the H. Comm. on the Judiciary*, 113th Cong. (2013) (statement of Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office); Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office, *The Next Great Copyright Act*, Twenty-Sixth Horace S. Manges Lecture (Mar. 4, 2013), in 36 COLUM. J.L. & ARTS 315 (2013).

namic and commercially important as the creation and dissemination of content? At what point might the success of the institution depend not upon the faithful execution of long-established policies, but rather upon the willingness and flexibility to reimagine itself?

The Copyright Office dates back to 1897¹³ and its statutory duties have evolved over time.¹⁴ But stakeholders today want a twenty-first century enterprise. Some of their expectations arise from the premise that functions and standards of the Office should be interoperable with those of the marketplace it serves. This would require, for example, investing in or certifying global data standards for identifying content and licensing terms; adopting or certifying image recognition processes; installing commercial-grade digital security measures to ensure the safety of registered works; and making significant upgrades to the interface and operation of the Office website, which serves as the portal for registration, recordation, rulemakings, and other statutory obligations, including the critically important duty to administer a current directory of designated service provider agents relating to ISP liability under the Digital Millennium Copyright Act. Some would have the Office take on yet additional roles, such as administering an online small claims tribunal or new licensing databases. Others see little hope that the Office can acquire the resources or technical capacity that it needs to move forward, and would therefore redefine its role appreciably.¹⁵

To be fair, many of the Office's services are now online and its website is the point of contact for most communications, legal proceedings, and services. In fact, 80% of registration applications are now submitted in part through the website (about half these applications involve physical

¹³ See Act of Feb. 19, 1897, ch. 265, 29 Stat. 538, 545 (1897) (providing for the creation of a separate Copyright Department in the Library of Congress and the position of Register of Copyrights).

¹⁴ Copyright Office duties are enumerated in Title 17 of the U.S. Code and include: examining and registering copyright claims; recording assignments, licenses, termination notices, security interests, and other copyright documents; administering statutory licenses (affecting online music services, cable operators, satellite carriers, and broadcasters); delivering policy assistance and expert studies to Congress; providing legal assistance to federal agencies, for example the Department of Justice, the U.S. Trade Representative, and the Department of Commerce; participating in negotiations and international meetings; conducting rulemakings and public hearings; reviewing final determinations of rates and terms for statutory licenses as set by the Copyright Royalty Judges; and maintaining public databases, an authoritative website, and related information and education services.

¹⁵ See, e.g., Members of the CPP, *supra* note 9, at 1203 (suggesting that the Office should transition away from the “day-to-day operation of the copyright registry and toward a role of setting standards for and superintending a system of separate but networked and interoperable private registries”).

deposits that the applicant then mails to the Office). Nonetheless, the Office's technical capacities (its bandwidth, networking equipment, electronic storage capacity, hardware and software, and the like) do not fully accommodate these services and require both short-term and long-term solutions.

In the long run, decisions about technology will not only inform but decide the success of the Copyright Office and its ability to interact with and support a modern copyright ecosystem. As the Copyright Office evolves and matures, one question is the degree to which its systems should continue to be intertwined with and managed through the Library's technology enterprises. It requires an assessment of institutional synergies, on the one hand, and the increasingly sophisticated and specific requirements of the copyright law, on the other hand.¹⁶

This is not to minimize the extraordinary scope of the Library as both an institution and mother agency. Its collections are incomparable by any number of standards¹⁷ and its scholarship and programs are equally immeasurable.¹⁸ The point is that the technology needs of the Copyright Office are distinct and require appropriately specific consideration.¹⁹

¹⁶ Organizationally, the Copyright Office is a department of the Library of Congress. Like other departments, it participates in agency-wide protocols and relies upon shared services as appropriate—for example, in the areas of legal counsel, labor relations, human resources, financial controls, and facilities support. However, the Office's duties are prescribed by the Copyright Act.

¹⁷ See *Hearing Before the Subcomm. on the Leg. Branch of the H. Comm. on Appropriations*, 113th Cong. 2 (2013) (statement of Dr. James H. Billington, Librarian of Congress), available at <http://appropriations.house.gov/upload/edfiles/hrg-113-ap24-wstate-billingtond-20130227.pdf> (“The Library is, quite simply, an irreplaceable asset for the United States. I have called it the nation’s strategic information reserve. It was for instance the only institution anywhere able to give back to the Afghan people enough copies of historical records of their own legal past to resume a tradition that had been eradicated by the Taliban. And the Library possessed the only paper produced in the U.S. government that described from an obscure Arabic periodical the basic terrorist scenario followed on 9/11 before it happened.”).

¹⁸ See *Hearing Before the Committee on Science, Space and Technology*, 113th Cong. 2 (2013) (statement of Dr. Stevan Dick, Barcuh S. Blumberg NASA/Library of Congress Chair of Astrobiology), available at <http://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-113-SY-WState-SDick-20131204.pdf> (discussing the search for microbial or intelligent life in the universe and what it means for the development of both scientific and societal theories).

¹⁹ See Nanette Petruzzelli (former Associate Register for the Registration Program), *Comments Submitted in Response to U.S. Copyright Office's Mar. 22, 2013 Notice of Inquiry at 3* (May, 18, 2013) (“Although the Office is a department of the Library of Congress, the Office now creates (unlike the

II. THE FUTURE IS NOW

There is little doubt that our copyright system faces new challenges today . . . Even the Copyright Office itself faces challenges in meeting the growing needs of its customers — the American public.

- House Judiciary Chairman Bob Goodlatte, April 24, 2013²⁰

The customers of the Copyright Office are both copyright owners and those who seek copyright information for research or business needs, for example, those seeking data about copyright ownership, the termination of legal transfers, or the expiration of copyright term. They have high expectations and their needs will only increase in the years ahead. For the Office to ignore the growing demand for more innovative services would be irresponsible, even though staffing shortages, budget reductions, workload issues, systems challenges, and the general business of the day would seem to provide plenty of good reason. Indeed, in this environment, asking overworked public servants to contribute to the future viability of the institution may not only be abstract, but a little unfair. We asked them anyway, knowing that for many employees, the work of the Copyright Office is more than a job.

Throughout the summer of 2011, our senior leaders held dozens of internal meetings with staff at all levels (e.g., examiners and other registration experts, public information staff, lawyers, systems analysts, and finance experts) in order to discuss and prioritize the needs of the Office. From there, we crafted a number of priorities regarding future services, and invited interested employees to join, and in some cases, lead the efforts, as an adjunct to their usual duties.²¹

On October 25, 2011, we announced a series of “special projects” (the “Project(s)”) to the public and commenced a two-year work plan to carry them out.²² As described in more detail in our 2011 *Priorities and Special*

Library) records of works which . . . give copyright information as opposed to bibliographic (library) information.”).

²⁰ Press Release, U.S. House of Representatives Committee on the Judiciary, Chairman Goodlatte Announces Comprehensive Review of Copyright Law (Apr. 24, 2013), available at http://judiciary.house.gov/news/2013/04242013_2.html.

²¹ While many employees participated, others served in leadership capacities, including: Doug Ament, Katrina Anderson, John Ashley, John St. Amour, Erik Bertin, Kim Brown, Mike Burke, David Christopher, Karyn Temple Claggett, Joanna Corwin, Melissa Crawford, Melissa Dadant, Adam Friedman, Annette James, Rob Kasunic, Zarifa Madyun, Wendi Maloney, Alicia Mroczky, Larisa Pastuchiv, Christopher Reed, Megan Rivet, Catherine Rowland, Jacqueline Smith, Gail Sonnemann, Kathryn Sukites, Syreeta Swann, George Thuronyi, Susan Todd, and Thomas J. Willis.

²² The Office announced the Projects as part of a broader publication that included the history of the Copyright Office and pending policy issues. See

Projects document,²³ the Projects focused the Office on a number of critical challenges, including: (1) attracting, retaining, and training a highly skilled and multi-talented staff; (2) creating relationships with academic institutions and scholars; (3) meeting the increasing public demand for copyright information and education; (4) updating, reconciling, and publishing registration practices; (5) reengineering the recordation process and making historic records available; (6) addressing problems in technology infrastructure and improving the website; and (7) updating the fee schedule and improving fiscal health.

The response was positive. For example, the Software and Information Industry Association called the *Priorities* document “an excellent roadmap for the most significant legislative, international and administrative copyright issues facing copyright holders and the Office now and into the immediate future.”²⁴ The U.S. Chamber of Commerce called it a “forward-thinking vision for the Copyright Office and the American copyright system.”²⁵ And the Copyright Clearance Center said the U.S. Congress should “consider the issues with urgency as recommendations are created.”²⁶

III. THE NEXT GENERATION COPYRIGHT OFFICE

Given the increasing importance of both digital distribution and electronic recordkeeping with respect to all manner of copyrighted works, we believe

Director of U.S. Copyright Office Announces Priorities, Special Projects for Next Two Years, U.S. COPYRIGHT OFFICE NewsNET, no. 435 (Oct. 25, 2011), <http://www.copyright.gov/newsnet/2011/435.html>.

²³ See MARIA A. PALLANTE, PRIORITIES AND SPECIAL PROJECTS OF THE U.S. COPYRIGHT OFFICE: OCTOBER 2011-OCTOBER 2013 (2011), available at <http://www.copyright.gov/docs/priorities.pdf>.

²⁴ Software & Information Industry Ass'n, *Digital Policy Roundup: Copyright Office Declares Priorities, Cybersecurity and Cloud Computing Still a Focus for the Hill*, SIIA DIGITAL DISCOURSE (Oct. 26, 2011), <http://www.siiainc.org/blog/index.php/2011/10/copyright-office-declares-priorities-cybersecurity-and-cloud-computing-still-a-focus-for-the-hill>.

²⁵ *Chamber Applauds the Release of Copyright Office's Strategic Plan*, GLOBAL INTELLECTUAL PROPERTY CENTER, U.S. CHAMBER OF COMMERCE (Oct. 25, 2011), <http://www.theglobalipcenter.com/chamber-applauds-release-copyright-offices-strategic-plan>.

²⁶ Press Release, Copyright Clearance Center, CCC Statement on the Priorities and Special Projects of the United States Copyright Office (Oct. 25, 2011), available at http://www.copyright.com/content/cc3/en/toolbar/aboutUs/newsRoom/newsArticles/news_2011/news_2011_10/ccc_statement_ontheprioritiesandspecialprojectsoftheunitedstates.html.

the Office would be remiss if it failed to position itself now to collect information that will be of increasing importance in the digital age.

- Domestic and International ISRC Agencies, May 21, 2013²⁷

In sharing the conclusions of the Projects, I should reiterate that some were easier to accomplish than others. Certain measured improvements (for example, the partnerships with academic institutions and scholars, and expert training for staff I mentioned at the outset) were possible to achieve before the Projects phase ended. In large part this is because they did not require significant expenditures or investments. It is also true that these particular projects were internally driven objectives, although the copyright community offered its enthusiastic support.

A. Staffing

Ultimately, I believe the Copyright Office will need to create a number of new positions to support both the volume and complexity of statutory, regulatory, and technology responsibilities. Meanwhile, as an initial step to realign resources and staff where there are gaps, we have begun the reconstruction of our Information and Records Division into two distinct divisions. One division will be dedicated to records and repositories, including the critical roles of: (1) making historic records available;²⁸ (2) improving and enforcing metadata standards for copyright records; and (3) ensuring the security of physical and digital copyright deposits. Secure repositories for digital files were not created during the previous reengineering process and are now urgent. The other division will remain focused on public information and education, including ongoing improvements to the website, but with a level of leadership, staffing, and programming that is required for twenty-first century demands. This is because the website is not only an authoritative source for copyright law and related information,

²⁷ ISRC Agencies, Comments Submitted on behalf of the International Federation of the Phonographic Industry and Recording Industry Association of America in Response to U.S. Copyright Office's Mar. 22, 2013 Notice of Inquiry at 4 (May 21, 2013). The ISRC Agencies administer the International Standard Recording Code ("ISRC"), "an international identification system for sound recordings and music video recordings." *What Is an ISRC?*, ISRC, <http://www.usisrc.org/about/index.html> (last visited Feb. 26, 2014). The ISRC Agencies' comments were endorsed by the National Music Publishers' Association ("NMPA"), including its wholly-owned subsidiary, the Harry Fox Agency, Inc. See NMPA, Comments Submitted in Response to U.S. Copyright Office's Mar. 22, 2013 Notice of Inquiry at 1 (May 20, 2013).

²⁸ To date, the Copyright Office has digitized 31.2 million records using a two-step quality assurance process and has engaged with the public regarding ways in which to make these searchable and accessible as quickly as possible, even in rudimentary form.

but also the primary tool by which the Register carries out her statutory duty to administer the provisions of Title 17.

Staffing is an ongoing issue, in part because of the difficult budget environment of the past four years.²⁹ The ability to attract experts in law and technology is more challenging than ever. Salaries of the federal civil workforce have remained frozen at 2010 levels, and budget cuts have had a serious effect on morale.³⁰ In fiscal year 2012, the Library of Congress administered voluntary separation programs for employees as a way of reducing payroll obligations in response to decreasing budget authority levels. The program prevented furloughs at the time, but the Copyright Office lost ten percent of its staff, creating more work and more pressure for the employees that remain. During the five-year period from 2007 to 2012, the Office's number of full-time staff fell from 483 to 396, its lowest number in decades. In fiscal year 2013, the Copyright Office and all other parts of the Library were required to furlough staff for a period of three days.

B. Technical Upgrades

In the past five years, unit sales of trade eBooks have increased over 4,456%. This exponential expansion of digital content means that the technological capabilities and limitations of the Copyright Office are increasingly relevant to the business efficiency of AAP member publishers.

- Association of American Publishers, Inc., May 21, 2013³¹

The Copyright Office's Technical Upgrades Project³² acknowledged shortcomings that were already widely known among the Office's major

²⁹ See generally OFFICE OF MANAGEMENT & BUDGET, OMB SEQUESTRATION UPDATE REPORT TO THE PRESIDENT AND CONGRESS FOR FISCAL YEAR 2014 (2013), available at http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_update_august2013.pdf.

³⁰ A pay increase of one percent was implemented following this lecture. See Press Release, White House, Executive Order — Adjustments of Certain Rates of Pay (Dec. 23, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/12/23/executive-order-adjustments-certain-rates-pay>; Lisa Rein, *Obama Issues Executive Order Giving 1 Percent Raise to Federal Workers*, WASH. POST, Dec. 23, 2013, http://www.washingtonpost.com/politics/obama-issues-executive-order-giving-1-percent-raise-to-federal-workers/2013/12/23/9c52531e-6c21-11e3-aecc-85cb037b7236_story.html.

³¹ AAP Comments, *supra* note 5, at 1-2.

³² The Technical Upgrades Project was the primary responsibility of Doug Ament, Chief Information Officer of the Copyright Office, with assistance from Joanna Corwin, Project Manager, Christopher Reed, Senior Advisor for Policy and Special Projects, Susan Todd, Registration Program Manager, Annette James, Business Analyst, and Vcentra, LLC, an independent consultant.

constituencies — authors, publishers, producers, and users of copyright information — regarding the reliability, security, and searchability of Office records. After meeting with a number of technology experts, we published a Federal Register Notice asking for written comments on a number of key questions.³³

Public response to the Notice was extremely informative, touching on both the registration and recordation systems, and more specifically on shortcomings with the user interface, quality of data and public records, standard identifiers, digital repository, information architecture and infrastructure, and customer experience. The American Intellectual Property Law Association said its members want the Copyright Office re-engineered so that data can be processed “in a way that can be easily printed, viewed, and forwarded outside of the system, and that allows clients to sign applications prepared by attorneys.”³⁴ The American Society of Media Photographers noted “a real need to upgrade the Copyright Office’s system to incorporate cross-browser compatibility.”³⁵ And Educational Testing Service (which files high volumes of applications for secure tests) indicated that the ability to link multiple account profiles to a single deposit account in the online registration system would do much to alleviate unnecessary costs and burdens.³⁶

Many cited more basic frustrations, such as the need to make the workflow viewable throughout the registration process, including making it possible for applicants to halt and then resume work on their applications and to access previous applications for reference.

Some asked for features such as animated wizard assistants, customized dashboards, instant message, video communication, and webinars. Others asked for routine access to related file histories; customer support during West Coast business hours; the ability to update contact information easily and inexpensively; and the availability of more venues for public engagement, if not satellite offices, outside of Washington, D.C.³⁷

Some noted the obvious connection between the credibility of Copyright Office records and certain policy challenges such as solving orphan

³³ See Notice of Inquiry, *supra* note 3.

³⁴ American Intellectual Property Law Association (“AIPLA”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 2 (May 20, 2013).

³⁵ ASMP Comments, *supra* note 4, at 3.

³⁶ Educational Testing Service, Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 1 (Apr. 23, 2013).

³⁷ These issues were raised in a variety of stakeholder discussions, as well as some of the written comments submitted to the Office. *See, e.g.*, Comments of AIPLA, GAG, AAP, Legal Zoom.com, the American Bar Association (“ABA”), and the American Society of Composers, Authors and Publishers (“ASCAP”).

works problems. For example, the American Association of Independent Music said that the “Copyright Office database should become a key searchable source for copyright information so that creators’ works are easily identifiable and do not become Orphan Works.”³⁸ SoundExchange underscored the importance of incorporating the kinds of standards used in third-party databases (such as ISRC numbers for sound recordings), which will in turn strengthen “the public’s trust in and reliance on the Copyright Office as a repository of valuable information.”³⁹ ASCAP noted the importance of aligning public registration information with the “world musical works repertoires.”⁴⁰

C. Registering Copyrights in Digital Works

As a special bonus for copyright geeks, we will finally be getting a revision to the Copyright Office Compendium!

- Title17.net, October 25, 2011⁴¹

Nothing perhaps is as important for the Office as ensuring the ongoing integrity of the registration system as measured by its technical rules and practices. In other words, while the Office strives for speed and efficiency when registering copyright claims, it cannot do so at the expense of quality and accuracy.

Under the leadership of a project manager and senior attorneys in the Copyright Office,⁴² an internal team of registration experts engaged in various schedules of auditing, reconciling, and documenting current registration practices across the Literary, Performing Arts, and Visual Arts divisions of the Office. The team devoted special attention to legal developments in the courts, as well as the more practical developments in the ways in which works of authorship are created and made available to the

³⁸ American Association of Independent Music (“A2IM”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 1 (May 21, 2013).

³⁹ SoundExchange Comments, *supra* note 7, at 3.

⁴⁰ ASCAP, Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 5 (May 21, 2013).

⁴¹ See Paul Fakler, *Copyright Office Releases Report of Office Policies and Special Projects*, TITLE17.NET (Oct. 25, 2011), <http://title17.net/archives/221>.

⁴² The Register’s Office assembled a team of experts to manage the rewrite of the Compendium, including Mary E. Rasenberger (independent legal consultant); Erik Bertin, Catherine Rowland, William Roberts, Maria Strong, Christopher Reed, and Abioye Oyewole (Copyright Office attorneys); Chad Becker, Kim Robinson, and Shawn Thompson (registration experts); McKenna Rain (information systems); and Dayna Cooper (paralegal support). Senior attorneys Rob Kasunic (head of registration policy) and Jacqueline Charlesworth (General Counsel) provided legal review and will jointly conduct ongoing rulemaking and other updates to registration practice.

public. Two professional organizations, the Copyright Society of the USA and the American Bar Association Section on Intellectual Property Law, formed reading committees on behalf of their memberships to support the highly technical drafting and editing process.

Where prior versions of the Compendium principally addressed the Copyright Office staff, the revised Compendium addresses its customers as well — providing statutory authority, regulatory guidance, and direction to those who submit registration applications, record copyright transactions, and inspect records. A key goal is to make the Office's practices more transparent and accessible: anyone who consults the Compendium will be able to find a wealth of legal and practical guidance.

The Copyright Office is aware that deference to its expert administrative authority turns upon the ongoing evaluation, upgrade, and articulation of our practices and the correlation of those practices to the state of the law. Thus the new Compendium will address authorship in the digital age, including the registration of website content and other born-digital works. It will provide assistance in determining whether online works are published, present new information on group registration options, and offer guidance as to what authorship or works may be covered by a given registration. (The scope of works covered by a registration is not always self-evident today, for instance, where a website contains a great number of contributions from many authors and when the content changes daily or several times a day.)

A critical part of our revision process has been reconciling practices that evolved since the last comprehensive update in 1984. During the intervening years, a combination of legal developments and practical concerns — for example, changes in workflow brought about by the transition to electronic processes — forced a number of adjustments and, in some cases, the adoption of abbreviated measures. The Office had implemented many of these measures to absorb and process the major backlog of registration applications that accumulated during the 2007–08 transition from a paper to electronic system. We have reevaluated these practices and in many cases will replace them with practices aimed at creating maximally useful registration records. The challenge will be doing so while maintaining an acceptable pace of service (the average time for electronic claims, barring complications in the claim itself, hovers around four months).

The Compendium revision is an extremely important undertaking as far as it goes. But what has become clear to the Office (in part from its discussions with stakeholders and in part from its own expertise in law and business) is that the Compendium revision is but the first step in developing a registration program for the twenty-first century. The symbiotic relationship between copyright law and technological change requires the Compendium to be a dynamic document that evolves with changes to the

marketplace. Indeed, the registration system itself must become more flexible to meet the changing needs of the creative communities and the general public. The Office will therefore be assessing its business organization and creating new teams of examiners with new kinds of expertise as appropriate. For example, we are concerned about the challenges that photographers and visual artists face within the current registration system, and may well need to add specialized staff to examine computer software registrations. We also understand the points raised by the recording industry in suggesting that registrations would ideally identify separate tracks of recorded music, even when registered as part of an album.⁴³

The Copyright Office will be convening many stakeholder meetings in the coming year to discuss the continued development of registration practices, both evolutionary and wholly new.⁴⁴ One complexity is the nature of the deposit that is required both for the examination process and the preservation of the copyright record (the Office must be able to certify the copyright record for parties as necessary, for example, in the case of infringement litigation). For published works, copyright owners must deposit copies that meet “best edition” criteria.⁴⁵ But Title 17 provides some flexibility to the Register to define the format and quality of the deposit as appropriate.⁴⁶ If registration is currently too cumbersome and too expensive for some, it might be significantly improved by requiring more efficient deposits (MP3s for sound recordings or thumbnail images for photographers, even for published works, for example). This kind of paradigm shift would make it more possible to design a process that achieves registration using an app on a mobile device.

At the same time, the Library of Congress has long been a beneficiary of the registration system. It consults the deposits submitted for copyright registration and makes selections for the national collection, although to date these have been primarily physical formats.⁴⁷ Addressing these com-

⁴³ Recording Industry Association of America (“RIAA”), *Comments Submitted in Response to U.S. Copyright Office’s March 22, 2013 Notice of Inquiry at 2* (May 21, 2013) [hereinafter “RIAA Comments”].

⁴⁴ These discussions will be convened jointly by the Registration Program and General Counsel’s Office.

⁴⁵ See 17 U.S.C. § 101 (2012).

⁴⁶ See *id.* § 408(c).

⁴⁷ In fiscal 2012, the Library selected approximately 8.6% of its acquisitions from the Copyright Office registration program, *i.e.*, works submitted by copyright owners for the purpose of legal examination and registration. In fiscal 2013, the number increased slightly to 10.4%. See LIBRARY OF CONGRESS, FISCAL 2014 BUDGET JUSTIFICATION 133, 141 (2013), available at <http://www.loc.gov/about/reports/budget/fy2014.pdf> (providing fiscal 2012 statistics); LIBRARY OF CONGRESS, FISCAL 2015 BUDGET JUSTIFICATION (Feb.

peting desires in the context of digital works, i.e., the desire to make the registration process more efficient, more secure, and less expensive for copyright owners, and the desire to supplement the Library's collection with works that are in preservation-quality formats is no small challenge. It will inevitably require some imagination, as well as changes to the copyright law and adjustments in agency operations.⁴⁸

Data security also requires a new paradigm. As digital works become more and more prevalent, copyright owners deserve clarity as to the security of their digital files. Particularly in the context of registration, where copyright owners submit their works for the purpose of obtaining legal protections, both the Copyright Office (for its registration needs) and the Library (for its collection needs) will have to offer and maintain secure repositories and other safeguards that inspire confidence and participation in the copyright system.⁴⁹ This concern is further heightened for works

2014) (providing fiscal 2013 statistics) (on file with the U.S. Copyright Office).

The concept of copyright registration predates the Library of Congress, but it became a major catalyst in the Library's growth during the period following the Civil War. *See generally* JOHN Y. COLE, JEFFERSON'S LEGACY: A BRIEF HISTORY OF THE LIBRARY OF CONGRESS (1993), available at <http://www.loc.gov/loc/legacy/loc.html> (explaining that between the years 1865 and 1897, registered works played a crucial role in the development of the Library of Congress into a national institution); *see also* Act of May 31, 1790 (Copyright Act of 1790), § 3, 1 Stat. 124.

⁴⁸ In one example, Mother Nature provided the impetus to move forward. The March 2011 earthquake and tsunami in Japan destroyed the Sony plant responsible for 100% of the global supply of IIDCAM-SR media, 40% of the Blu-Ray media, and other production-quality tapes. The Copyright Office reworked its deposit requirements to allow the copyright owners of television programs to transmit digital files to the Library's state-of-the-art facility for audio-visual preservation in Culpepper, Virginia (David Packard campus). Although participation in the program has been minimal, it may nonetheless offer a starting point for discussing the registration preferences and security expectations of stakeholders when it comes to digital files.

⁴⁹ The Library also receives certain published works through the separate provisions of "mandatory deposit" in Title 17, provisions that the Copyright Office administers on behalf of the Library and in accordance with the statute. These provisions legally require copyright owners to deposit copies of their works within three months of publication in formats specified by regulation. *See* 17 U.S.C. § 407(a) (2012). Most national libraries around the world have similar provisions and most are struggling with the complexities of demanding and securing works that are digital. *See generally* WIPO Second Survey on Voluntary Registration and Deposit Systems, WORLD INTELLECTUAL PROPERTY ORGANIZATION (2010), http://www.wipo.int/copyright/en/registration/registration_and_deposit_system_03_10.html.

that are unpublished, as such works generally receive a higher presumption of protection against unauthorized copying or dissemination.⁵⁰

D. Recording Transfers, Security Interests, and Other Documents

At a time when virtually all business-to-business communications are carried out electronically, the inability of registrants to file transfers of copyright ownership, license agreements and other relevant documents with the Office electronically deters copyright owners from filing relevant documents.

- Recording Industry Association of America, May 21, 2013⁵¹

There is no general requirement that copyright owners or, for that matter, anyone, record with the Copyright Office transfers of copyright ownership, licensing information, security interests, or other matters relevant to the progression of copyright interests. But as with registration, the law provides some incentives.⁵² For those who do participate, the Office sets certain minimum standards for the form and content of various recordable documents. It also maintains true and accurate copies of documents that are generally accepted by courts of law as authentic evidence of official transactions.⁵³

Originally part of the strategy to bring registration processes online, the reengineering of the recordation system was tabled when the conversion of the registration program proved more urgent and expensive than expected. Like many things viewed in hindsight, it may in fact be advantageous that this was so. The Office now has an opportunity to remake the recordation function in a manner that will better serve the current marketplace, rather than migrating the system of the twentieth century.⁵⁴ As stated by one expert, if the Copyright Office were to create a system that used global standard identifiers, it would make the Office data “interoperable with worldwide databases.”⁵⁵

⁵⁰ See *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 553 (1985) (“The right of first publication implicates a threshold decision by the author whether and in what form to release his work Because the potential damage to the author from judicially enforced ‘sharing’ of the first publication right with unauthorized users of his manuscript is substantial, the balance of equities in evaluating such a claim of fair use inevitably shifts.”).

⁵¹ RIAA Comments, *supra* note 43, at 2.

⁵² See 17 U.S.C. §§ 205, 302(d), 304(c)(4)(A) (2012).

⁵³ See *id.* § 410(c).

⁵⁴ Also helpful are the 2010 congressional resolutions that validated the use of e-signatures for online transactions. See H.R. Con. Res. 290, 111th Cong. (2010) (enacted); S. Res. 576, 111th Cong. (2010) (enacted).

⁵⁵ Paul Jessop, County Analytics, Ltd, Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 9 (May 20, 2013).

The documents recorded with the Copyright Office are not only a helpful resource but also, at times, the authoritative source of information for legal purposes. Among other things, people may rely on this information to resolve ownership issues; document transfer agreements, assignments, and licensing agreements; verify the legitimacy of alleged prior transactions before entering into new ones; compile information on a copyright owner's portfolio of registrations; and research the extent to which a work is protected by the copyright law. Notwithstanding the usefulness of the Office's data, there is room for significant improvement. For example, Author Services, Inc., explained that "there is not enough information to determine the ownership if there is a transfer and the contact information of the parties and/or owner and/or new owner are not available as part of the online card record."⁵⁶

For certain termination documents (the notices sent by authors or their heirs to terminate a prior grant of copyright interests), recordation with the Copyright Office is mandatory to exercise the right. Termination is a significant legal entitlement, making it possible for authors to recapture the value of their works later in life, but no earlier than either thirty-five years from execution of the grant to be terminated or fifty-six years after the copyright was issued (depending on the date of the transfer).⁵⁷ For books, movies, films, and songs that are still lucrative after many years, the stakes can be high. Thus, the regulations and practices of the Copyright Office must be clear, and the Office must be accurate and timely in its review and public indexing of the notices. Many issues relating to termination notices are now becoming ripe for the first time for transfers executed after effective date of the 1976 Act, and there is consequently some urgency for the Office to maximize the usefulness of its termination records.

After meeting with law firms, businesses, and trade associations in the past year and half, we have clarified a few issues. For example, we recognize that some legal changes to the recordation process may be prudent to make recordation optimally useful. In other words, the system ideally would be far less voluntary than it currently is, meaning that more authors, publishers, producers, licensees, heirs, and assignees would be incentivized, if not required, publicly to assert their ownership interests as a condition of maintaining certain remedies or other protections, including the ability to seek statutory damages. I have discussed this issue before, as have many others.⁵⁸

⁵⁶ Author Services, Inc., Comments Submitted in Response to U.S. Copyright Office's Mar. 22, 2013 Notice of Inquiry at 3 (May 3, 2013).

⁵⁷ See 17 U.S.C. §§ 203, 304 (2012).

⁵⁸ See, e.g., Remarks at the Revitalizing Formalities Symposium sponsored by the Berkeley Center for Law & Technology and the Berkeley Technology Law

Legal incentives to record, however, are only half the story of building a comprehensive, accessible public record of copyright transactions, and hence of ownership of copyright interests. Recording is now a cumbersome, costly process that requires manual examination and data entry from paper documents. That process must become far easier, more efficient, and less expensive than it now is. Some local government offices that record real property documents now have systems that accept “self-examining” and “self-cataloguing” electronic documents. The documents contain integrated, formatted information that can be validated and used to create catalog entries. As a result, the systems can “examine” and catalog most documents without human intervention, and can place processed documents on public record within minutes.

The Copyright Office can and should work with its customers to create similar kinds of electronic submission standards for copyright documents. We might also need to ask remitters to enter their own cataloging information — with proper guidance, validation, and quality control from Copyright Office staff — placing the legal burden of submitting accurate information on the remitters. Such innovations could dramatically reduce the cost and increase the speed of recording, and go a long way toward making recording an inexpensive, ingrained habit of everyone engaged in significant copyright transactions.

Whatever the answer, addressing the recordation process is not something that can wait. It is as urgent and essential as the national registration system, and indeed, the effectiveness of one is intertwined with the other. Unfortunately, the public won’t tolerate a system that doesn’t work well. Said one company, when “search results are returned by the Office’s systems, they tend to include numerous irrelevant results” and that “[i]mplementing search filtering by work type would be a useful improvement to the Office’s public-facing search capabilities.”⁵⁹ And as noted at the beginning of this lecture, if the Office could adopt unique identifiers for authors, musical works, and sound recordings, it could significantly improve the performance of registration and recordation registries. Thus, in the months ahead (notwithstanding the long-term budget needs in this

Journal (April 18, 2013). For more information on this symposium, see BERKELEYLAW, <http://www.law.berkeley.edu/14263.htm> (last visited Dec. 23, 2013); Jane C. Ginsburg, “With Untried Spirits and Formal Constancy”: Berne-Compatibility of Formal Declaratory Measures to Enhance Title-Searching, Columbia Public Law Research Paper No. 13-346 (2013), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262924##.

⁵⁹ Music Reports, Inc., Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 3 (May 21, 2013).

area), the Office will seek additional input from stakeholders and experts through a number of public fora.⁶⁰

III. TOO SMALL TO FAIL

[We] hope that Congress will recognize the pressing need to upgrade the Copyright Office's digital systems and to make the same kind of continuing investment in digital technologies as working photographers and most businesses have had to make in order to remain in business.

- American Society of Media Photographers, May 21, 2013⁶¹

Although it is small,⁶² the Copyright Office contributes enormously to the development of copyright law, the economy, and cultural heritage of the nation.⁶³ But funding is scarce. In fiscal year 2013, the Office had an overall budget of just \$44.2 million. About \$28.7 million of that (or two-thirds) came from fees paid by copyright owners for registration, recordation, and other public services.⁶⁴ The other third (approximately \$15.5 million) came from appropriated dollars.⁶⁵

⁶⁰ Professor Robert Brauneis, Abraham Kaminstein Scholar in Residence at the Copyright Office, will be coordinating these proceedings. Students from the Copyright Office Practicum at Stanford Law School, working under the general direction of Professor Paul Goldstein, are also studying these issues and considering solutions.

⁶¹ ASMP Comments, *supra* note 4, at 6.

⁶² In fiscal year 2012, the Library employed 3,270 staff, as follows: Library Services (1,350); Congressional Research Service (616); U.S. Copyright Office (396); Library Office of Strategic Initiatives (337); Library Office of Support Operations (230); Office of the Librarian (131); National Library Service for the Blind and Physically Handicapped (105); Law Library of Congress (90); and Office of the Inspector General (15). LIBRARY OF CONGRESS, ANNUAL REPORT OF THE LIBRARIAN OF CONGRESS 88 (2013), available at <http://www.loc.gov/about/reports/annualreports/fy2012.pdf>.

⁶³ See 159 CONG. REC. H5777 (daily ed. Sept. 20, 2013) (statement of Rep. Visclosky), available at [http://www.gpo.gov/fdsys/pkg/CREC-2013-09-20-pt1-PgH5773-3.pdf#page=5](http://www.gpo.gov/fdsys/pkg/CREC-2013-09-20/pdf/CREC-2013-09-20-pt1-PgH5773-3.pdf#page=5), ("What about the U.S. Copyright Office? For God's sake, what is there to fight over in funding the Copyright Office?").

⁶⁴ In keeping with 17 U.S.C. § 708, the Office conducts periodic studies of costs and adjusts fees accordingly. It undertook this process most recently as one of the Projects discussed herein. In raising some fees but not others, it considered the costs of its services as well as the objectives of the copyright system. See U.S. COPYRIGHT OFFICE, PROPOSED SCHEDULE AND ANALYSIS OF COPYRIGHT FEES TO GO INTO EFFECT ON OR ABOUT APRIL 1, 2014 (2013), available at <http://www.copyright.gov/docs/newfees/USCOFeeStudy-Nov13.pdf>.

⁶⁵ From 2010 to 2013, the Office has absorbed a 20.7% reduction in appropriated dollars and an 8.5% reduction in total budget authority, leading to staffing shortages and gaps in technology maintenance plans.

An appropriation of \$15.5 million seems modest in comparison to the public importance of the copyright system, including free access to ownership information, transfers, and other data that drive commercial and cultural development. Moreover, the value of the works acquired by the Library through the Copyright Office — from registration as well as the mandatory deposit provisions of the Copyright Act — is almost double the annual appropriation. In Fiscal 2012, the total estimated value of works transferred to the Library was over \$30 million.⁶⁶ This is a remarkable positive return on the Office's appropriation, making it one of the great government bargains for taxpayers. The question is whether this system is a sustainable equation.

How well the Copyright Office will be able to perform its services in the future will turn on the strategies of the kind proffered by the staff and stakeholders, as well as the investments that are put in place today. As the fee provisions of Title 17 do not encompass capital improvements, these would require either a statutory change or additional appropriated dollars.⁶⁷ (As I mentioned earlier, this also assumes more direct responsibility for the Copyright Office in managing our technology needs.)

More generally, the Office would benefit greatly from more flexibility in its legal spending authority. Three things stand out in this regard. First is the ability to build a reserve account from the fees collected that the Office can rely upon both for necessities and emergencies across budget cycles, including during periods when incoming fee receipts fluctuate.⁶⁸

⁶⁶ See FISCAL 2014 BUDGET JUSTIFICATION, *supra* note 47, at 141.

⁶⁷ See Press Release, Public Knowledge, Public Knowledge Commends Copyright Office on New Priorities (Oct. 25, 2011), available at <http://www.publicknowledge.org/public-knowledge-commends-copyright-office-new-pri> (“We hope that Congress will recognize the great needs of the Office to bring its technical registration systems into the 21st century and give the Office the resources it needs to complete that important task.”).

⁶⁸ 17 U.S.C. § 708(d) states, “Such fees that are collected shall remain available until expended.” However, in the practical context of the budget process, Congress has frequently required the Office to offset its request for appropriated dollars by the amount of reserve income it may have at the end of a fiscal year. In addition to leaving the Office with no financial cushion by which to run its operations, this approach has left copyright owners, who pay fees, with subpar service and the general public, who depend upon appropriations, with subpar databases and other services. Cf. Leahy-Smith America Invents Act, Pub. L. No. 112-29 § 22, 125 Stat. 284, 336 (2011) (codified at 35 U.S.C. § 42(c) (2012)) (authorizing the U.S. Patent and Trademark Office to deposit a portion of patent and trademark fees into a reserve fund, which the Office may access and spend as needed to run its operations, irrespective of its annual appropriations from Congress); Innovation Protection Act, H.R. 3349, 113 Cong. (2013) (proposed legislation providing for the permanent funding of the U.S. Patent and Trademark Office).

Second, and even better, would be a multiyear budget cycle, as this would allow the Copyright Office to engage in a level of entrepreneurial planning that is not possible under an annual appropriations process. The Office's budgetary challenges have been greatly exacerbated in the past three years, in which Congress has enacted reduced budgets late in the fiscal year. But even apart from such extremes, a twelve-month cycle is inefficient, if not impossible, when so much of the administration of registration, recordation, and statutory licenses depends upon strategic, longer-range improvements to information technology systems.⁶⁹ And third, we should explore whether and how costs might be assessed through more innovative equations. This might include mechanisms to allow for the recovery of costs in the aggregate, or the recovery of capital costs that are in the interest of the copyright system, as a supplement to such funds as Congress may continue to appropriate and invest in the Copyright Office.

CONCLUSION

My lecture tonight reflects not the end of a process but the beginning. The Copyright Office is an important institution, serving a diversity of customers, a dynamic marketplace, and a field of law that continues to grow more and more complex. The special projects of the past two years were fulfilling, and at times exciting, but they were largely exploratory. Thus we will continue our work, making measured improvements under the Office's current administrative authority and working appropriately within budget realities.

However, the larger, future-looking issues — the next generation of services that so many of you envision — are another story. For me, these are issues of copyright policy, but they also speak to broader themes of government institutions and the meaning of public service. Such issues deserve, and will undoubtedly require, the talent and participation of the entire copyright community.

⁶⁹ Unlike the U.S. Patent and Trademark Office and federal courts, the Copyright Office did not have the legal authority to spend reserve fees during the October 2013 lapse in appropriations. It might otherwise have managed a small staff to process urgent registrations, such as those required by applicants for major business dealings or to get into court.

Mr. COBLE. I am now pleased to recognize—Mr. Nadler is not here—Mr. Conyers. I will recognize the gentleman, the distinguished gentleman from Michigan, former Chairman of the full Committee, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Coble. I am delighted to join you in welcoming the Register of Copyrights. I would like to merely observe that this Office plays a critical role in promoting and protecting the integrity and vitality of our Nation's copyright system. And to that end, today's hearing should focus on several factors.

As a fundamental matter, the Copyright Office must be on the forefront of our fight against piracy. As I have stated many times, copyright is critical to job development and the overall health of our Nation's economy. An intellectual property system that protects copyrights, incentivizes their owners to continue to innovate—that, of course, creates jobs and strengthens the Nation's economy.

Unfortunately, piracy is devastating to our economy and harms our creators and innovators. It is directly responsible for the loss of billions of dollars and millions of jobs. The Copyright Office helps to combat piracy by educating the public and Congress on the seriousness of piracy and how to prevent it, and it works with other agencies to strengthen copyright enforcement.

In addition, the Office, through its International Copyright Institute, helps deter piracy of copyrighted works by encouraging the development of effective intellectual property laws and enforcement abroad. Accordingly, we should encourage the Office to further explore ways to strengthen its efforts to maintain a robust copyright system and combat piracy.

A factor integral to the success of the copyright system is for the Copyright Office to upgrade to the digital age and become more user-friendly, and accordingly we must support the Office's efforts to modernize. For example, the Office's recordation system continues to be a cumbersome and costly process that requires manual examination and data entry. The functionality of the Office's databases and the usability of the Office's website frankly need improvements. The security of deposited digital works should be enhanced. The copyright community needs a system which provides a more usable public record of copyrighted material.

The Copyright Office is aware of the need to modernize, and we must help it do so. And most importantly, a strong copyright system requires that we fully fund the Copyright Office, and in that regard the Chairman of this Committee, Bob Goodlatte, joins me in supporting that idea.

The Office performs several significant roles in our copyright system, including examining and registering copyright claims, recording copyright documents, and administering statutory licenses. Yet, since 2010, Congress has cut the Copyright Office's budget 7.2 percent while continuing to ask the Office to do even more. And as a result, the Office has had to rely on its small reserve fund of customer fees to barely meet operating expenses. This reduces any operating cushion the Office could otherwise use for long-term planning.

Further, the recent sequester further compounded the resource problems at the Copyright Office. It limited the Office's ability to hire staff to fulfill its many duties. In fact, just considering the reg-

istration program, it currently has 48 vacancies out of 180 staff slots, according to our research.

Unless Congress can't agree on a Federal appropriations plan next year, the Office will face another mandatory sequester in Fiscal Year 2016. Fully funding the Copyright Office will help it carry out the increasing volume and complex work that we expect it to perform. This, in turn, will make our copyright system become more effective and efficient.

And so I thank Chairman Coble for holding today's hearing, and I look forward to hearing from the Register of Copyrights herself. Thank you, Mr. Chairman.

Mr. COBLE. I thank the gentleman from Michigan.

The Chair now recognizes the distinguished gentleman from New York, the Ranking Member of the Subcommittee, Mr. Nadler, for his opening statement.

Mr. NADLER. Thank you, Mr. Chairman, for holding this oversight hearing with respect to the U.S. Copyright Office.

I would like to thank the Register of Copyrights, Maria Pallante, for appearing again before the Subcommittee, and thank you and your staff for serving as a resource during the Committee's comprehensive copyright review. I look forward to hearing how the Copyright Office can continue to provide valuable services for both copyright owners and users, which is particularly important as intellectual property and copyright matters constitute an increasingly significant segment of our economy and culture.

Many people might be surprised to learn just how many functions the Copyright Office performs. The Copyright Office registers copyright claims, records documents, administers several statutory licenses, performs regulatory responsibilities, and provides information to the public. In addition to these administrative functions, the Copyright Office provides expert advice to Congress, conducts studies, and makes policy recommendations.

Over the years, the Copyright Office has given Congress a number of studies on a variety of topics, including orphan works, library exceptions, statutory licensing reform, Federalization of pre-'72 sound recordings, and master digitalization of books.

The recent and ongoing reports and studies have been extremely helpful to Members of Congress and their staffs. I am particularly thankful for the updated report examining the issue surrounding visual artists and resale royalties in the United States that was released in December of last year, and I look forward to reviewing the music licensing report that will be released in the near future.

The future success of the Copyright Office will largely depend on how technology at the Copyright Office is connected and managed through the Library's technology enterprises. For that reason, I am interested in hearing about how and if the Copyright Office's technical capacities are fully able to accommodate the long-term goals of the Office.

Electronic submission standards for copyright documents will also continue to grow in importance. The Copyright Office should continue to make recordation inexpensive and workable for copyright transactions.

The Copyright Office has been able to perform their numerous responsibilities with very limited funding. In Fiscal Year 2014, the

Office had an overall budget of just \$45 million, with about \$28 million of that coming from fees paid by copyright owners for registration, recordation and other public services, and \$17 million from appropriated funds.

The Copyright Office continues to face staffing shortages, budget reductions and workloads, and as the distinguished Ranking Member of the Committee mentioned, the sequester. With these challenges, the Copyright Office may need to consider creating new positions to support the complexity of statutory technology and regulatory responsibilities.

Copyright owners depend now, more than ever, on searchability, reliability, and security of Copyright Office records. Copyright owners want to know that their digital files will remain secure as digital works become used more often. The Copyright Office and the Library need to maintain secure repositories so that users can continue to have confidence in participation in the copyright system.

I know this is a goal that is shared by Ms. Pallante and her leadership team, who have taken steps to improve the core services and technical capacity at the Copyright Office. I look forward to hearing from Ms. Pallante today about how we can continue to improve the Copyright Office and ensure that it provides state-of-the-art services in the years to come.

I thank you, and I yield back the balance of my time.

Mr. COBLE. I thank the gentleman.

We have been joined by the gentle lady from California, the gentle lady from Washington, I think, Washington or California, the Evergreen State, and the distinguished gentlemen from Pennsylvania, North Carolina, and Georgia.

As I said earlier, we are honored to have the United States Register of Copyrights as our witness today. Maria A. Pallante is the 12th appointed Register of Copyrights and Director of the United States Copyright Office. In her position, Ms. Pallante directs the legal policy and business activities of the Office. The position of the Register of Copyrights is a unique, historic, and vitally important one, and Ms. Pallante assumed control of the Office at an especially challenging and momentous time. Among other key duties, the Register serves as the principal adviser to Congress on matters of copyright law and policy.

Ms. Pallante had to spend much of her career in the Office where she previously served as the Associate Register for Policy and International Affairs, Deputy General Counsel, and Policy Advisor. She also served as a senior advisor to the Librarian, Dr. James Billington, immediately prior to being appointed Register. She spent nearly a decade as Intellectual Property Counsel and Director of Licenses for the Guggenheim Museums in New York. She earned her J.D. degree from the George Washington University School of Law and her Bachelor's degree from Misericordia University.

Madam Register, it is good to have you with us.

We try to comply with the 5-minute rule, if possible. When you see the green light turn to amber, the ice on which you are skating is becoming thin, but you won't be penalized if you violate it. But try to stay within the 5 minutes, if you can.

We are pleased to have you with us today.

TESTIMONY OF THE HONORABLE MARIA A. PALLANTE, REGISTER OF COPYRIGHTS AND DIRECTOR U.S. COPYRIGHT OFFICE

Ms. PALLANTE. Chairman Coble, Ranking Member Nadler, Members of the Subcommittee, I would like to thank you as well as Chairman Goodlatte and Ranking Member Conyers of the full Committee for inviting me to testify today.

The Copyright Office is a significant Federal institution. We interact with and provide services to businesses of all sizes, from small proprietors to multinational corporations, many of which are in a state of constant growth and innovation. Never has the delivery of creative content been faster, more interactive, or more global than it is now.

In turn, it has become clear to me that the Copyright Office must also become more forward-thinking than it is; that is, more flexible and more interoperable with the marketplace that we serve.

In the past couple of years, I have focused the Office on two primary goals: first, carrying out the day-to-day workload of administering the law; and second, engaging in discussions with the public about future strategies and direction for the Office. Mr. Chairman, we have been very transparent about this work. We have published numerous public inquiries, we have solicited written comments, we have conducted numerous roundtables, and we have participated in dozens of meetings at bar associations, conferences and seminars.

In 2011, we published and have since followed a multi-year work plan. This included a series of special projects designed to inform the priorities and future path of the Office. Notably, this occurred alongside budget cuts, further challenging us to not only think big but to think creatively about our operations. Here are some of the highlights of what we have accomplished.

We analyzed and wrote the first revision in decades of the Compendium of U.S. Copyright Office Practices, which we released in draft form to the public last month. At 1,200 pages, the Compendium is replete with our core administrative practices and helpful examples for authors, artists, and other customers. It is the instruction manual for our staff in the examination process, and it is a key legal source for the courts. We have received tremendously positive feedback regarding both the authoritative text and the clear presentation of the material.

I would like to underscore some of the groundwork that we have done in the area of technical upgrades, which was really a form of self-evaluation for the Office. Essentially, we conducted a public review of our relative strengths and weaknesses in providing services, with a focus on the user interface of our electronic systems; the quality of our public records; security issues; the usability of our website; industry standards, for example with respect to metadata, copy controls and private registries; and the overall customer experience of interacting with the Office.

We spent considerable time evaluating our recordation service, which Ranking Member Conyers has pointed out is still a paper-based process. Recordation is separate from registration. This is the process by which licensing information, security interests and other copyright documents are recorded with the Office on an ongo-

ing basis. We need to transform it from a paper process to an interoperable digital platform.

We are grateful to everyone who has participated in this work, including book publishers, public interest groups, technologists, the music and movie industries, photographers, authors' groups, and others.

Turning to my final point, I want to discuss our budget, which in turn affects staffing and technology. As mentioned, we have a \$45 million budget; about \$28 million of that comes from fees. In May 2014, we implemented a new fee schedule following a 2-year public process, raising the general fee for registration from \$35 to \$55. We did retain a lower fee for certain small actors. This was the first time we have ever differentiated our fees, but there has been strong public support for the concept, and I think we probably have to do more of it in the future.

To be very clear, and notwithstanding the direction of our statutory mandate on fees, I should note that the Copyright Office fees do not recover the full cost of our services. This is because we share IT infrastructure with the Library of Congress and receive our IT support services from a central Library department.

If we want the public record to be better, we will need better resources. And if we want the resources to come primarily from fees, then we should expect that copyright owners will, in turn, want better systems and services than they have now. Moreover, under the current statutory language, we are limited to charging for the cost we incur for providing services. That is, our fee authority does not permit the Office to collect for capital improvements or other forms of investment above actual cost after the IT infrastructure that is subsidized by the Library. This equation may be something that Congress wants to visit.

In terms of staffing, I will just say the Copyright Office is smaller than it should be to carry out the volume and complexity of the work that we are charged with. Unfortunately, as the staff has been reduced, the work of the Office and the complexity of the copyright system have increased dramatically.

Chairman Coble, that concludes my statement, but I wonder if I might have a minute on a different point.

[The prepared statement of Ms. Pallante follows:]

Statement of Maria A. Pallante
Register of Copyrights and
Director of the United States Copyright Office

Hearing Before the
Subcommittee on Courts, Intellectual Property, and the Internet
Committee on the Judiciary
United States House of Representatives

Oversight of the U.S. Copyright Office

September 18, 2014

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**United States House of Representatives
113th Congress, 2nd Session**

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Oversight of the U.S. Copyright Office

INTRODUCTION

Chairman Coble, Ranking Member Nadler, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today regarding the work of the U.S. Copyright Office. This is a significant time for the Nation's copyright system, and I am grateful for your leadership in ensuring its continued effectiveness. Today's oversight hearing and the sixteen policy hearings you have convened to date in this Congress underscore the extraordinary value of the American copyright system and its role in encouraging authorship, disseminating creative works, fostering investment, and facilitating commerce in the global marketplace.

ROLE OF THE UNITED STATES COPYRIGHT OFFICE

The Copyright Office is a department of the Library of Congress. The Office plays an integral role in the overall functioning of the copyright system. It sits at the center of a dynamic marketplace in which creative content drives a sophisticated chain of businesses in the information, entertainment, and technology sectors. These businesses are both a hallmark and reflection of the 21st century. Consumers want to access and share content of all kinds, using devices and platforms of all kinds. Delivery of creative content is faster, more interactive, and more global than ever before. These kinds of changes are like no others in history. It is therefore understandable that our customers are calling for a faster and more nimble Copyright Office—one that is more technologically advanced and more interoperable with the marketplace it serves.

The Copyright Office carries out a variety of statutory duties. These include examining and registering copyright claims; recording assignments, transfers, terminations, and other

copyright documents; and administering statutory licenses (affecting online music services, cable operators, satellite carriers, and broadcasters). The Office administers the mandatory deposit provisions of the law, in which copyright owners deposit copies of published works with the Library of Congress for the national collection.

Pursuant to the provisions of the Copyright Act, the Register has the authority to conduct rulemakings and prescribe regulations relating to the administration of her statutory duties. For example, the Register may promulgate regulations addressing certain aspects of statutory licensing or the kinds of deposits or identifying information that should be submitted for registration. Pursuant to section 702 of the Copyright Act, all regulations established by the Register under Title 17 are subject to the approval of the Librarian of Congress.

Congress has also prescribed important law and policy functions for the Office. These include delivering policy assistance and expert studies to Congress and to the public; providing legal assistance to federal agencies (including legal interpretation of the provisions of Title 17); participating in trade and treaty negotiations, international meetings, and United States delegations; conducting rulemakings and public hearings; and reviewing final determinations of the Copyright Royalty Board. The Office maintains accurate and authoritative information for the benefit of the public, including physical and electronic registries; databases of copyright ownership information; a public website and public information services; and the Compendium of U.S. Copyright Office Practices.

As Congress considers updates to the copyright law, it is possible that the Copyright Office will absorb new functions, for example with respect to statutory licenses, small claims administration, or registration policy. Discussions about the future are invigorating, but they highlight the need for a series of improvements that may be both small and large, from minor upgrades to paradigm shifts. The Copyright Office has spent the past few years identifying and discussing what form these improvements might take and how best the Office might accomplish them.

THE PAST THREE YEARS

When the Librarian appointed me to the position of Register on June 1, 2011, the entire federal government was entering a phase of fiscal review and sequestration. I was very interested in engaging with Copyright Office customers and other stakeholders to evaluate how we might position the Office to be both fiscally prudent and highly effective in the years ahead, not only to assess potential changes to Office services but also to ensure that the Office will reflect the prominence of the copyright system in the greater marketplace.

In October 2011, the Office published a comprehensive document laying out seventeen legal and administrative priorities and a series of ten special projects designed to evaluate its capabilities and inform the future development of its services. (Priorities and Special Projects of the Copyright Office, October 25, 2011). The document was very well received by the public and provided a multi-year work plan that the Office has now largely

completed. The special projects, in particular, required outreach to the larger copyright community.

Here are a few highlights from the special projects.

Compendium of U.S. Copyright Office Practices, Third Edition

In August 2014, the Copyright Office completed the first major revision of the Compendium (Compendium of U.S. Copyright Office Practices, Third Edition) in decades and released it in draft form (see our website at www.copyright.gov). The prior version was published in 1984 and was amended in part in 1988 and 1998. The new version provides more than 1200 pages of Copyright Office administrative practices and sets the stage for further discussions and amendments in the areas of registration and recordation policy, especially in relation to the digital environment. The Compendium is a technical manual for staff, as well as a guidebook for authors, copyright owners, licensees, practitioners, scholars, the courts, and members of the general public.

As in the past, the Compendium addresses fundamental principles of copyright law—for example, standards of copyrightability, joint authorship, works made for hire, and termination of transfers—as well as routine questions involving fees, records retrieval, litigation documents, and other procedural matters. The Third Edition offers the significant benefit of electronic publication for the first time ever, so it will become a living document. More than three times the size of the previous edition, it will nonetheless be more navigable than ever before and allow for a regular schedule of updates. In final form, it will feature hypertext links to cross-referenced material, glossary terms, and statutory and regulatory provisions.

Technical Upgrades Analysis

The Copyright Office commenced a public discussion of its technical capabilities in 2012 in order to acknowledge and assess its relative strengths and weaknesses in providing services and otherwise executing the duties of Title 17. A broad section of the copyright community met with the Office or filed written comments, pointing out issues with the user interface, quality of public records, security concerns, interoperability, and overall customer experience.

Here are some of the forward-thinking suggestions we received: the Copyright Office must enhance the security of digital works deposited; adjust the requirements of registration to accommodate the manner in which content is created and disseminated on the Internet; improve the functionality of the Office's databases and the usability of the Office's website; establish or adopt granular metadata standards; implement platforms and data standards that allow for business-to-business applications with programs and databases in the copyright industries or technology sectors; encourage or require the use of unique identifiers of authors, owners, and discrete works; and develop an application program interface ("API") that will allow interoperability with third-party registration services and databases of information about works, authors, or licensing maintained by copyright

industries, new businesses, and the technology industry. These kinds of improvements would yield a more robust public record, e.g., one that not merely identifies the copyright owner of an album or sound recording but also every author or musician on every track. This information could then be relied upon and leveraged by businesses operating in the digital copyright space.¹

Many stakeholders focused specifically on potential improvements to the copyright registration system. Like other chapters of the 1976 Copyright Act, the registration provisions reflect an era in which businesses distributed physical copies of works and consumers typically expected to own them. Today, businesses offer many works by streaming or displaying them via an array of technologies, and consumers watch sports programming, read books, and listen to musical performances through a wide variety of mobile platforms and devices. Frequently this content is licensed for access only; copies may or may not be available for downloading. Because of the threat and reality of Internet piracy, many copyright owners choose to keep tight controls on digital formats, including access controls, copy controls, and other forms of digital rights management.

The Copyright Office has a responsibility to weigh these marketplace shifts against the purpose and efficacy of the law and to ensure that Copyright Office practices and regulations, e.g., in the area of registration, are not stuck in time but, rather, reflect the realities of the digital environment and the business expectations of those that the Office serves. This work requires the Office to engage with copyright owners as well as the Library, because the advent of digital works presents challenges and tensions that were not contemplated by the current statute.

A central question is the manner by which digital deposits—which are submitted by copyright owners for the purpose of examination, registration and legal protection—may be acquired, preserved, and made available by the Library to its patrons and the public generally. Such questions may or may not be separable from the question of digital deposits submitted in accordance with the so-called mandatory deposit provisions, under which the Library has long received physical deposits and would like to receive digital deposits pursuant to regulations and/or negotiated terms. These are important public policy questions and the Copyright Office will need to address all perspectives carefully and impartially, ultimately making regulatory recommendations to the Librarian or statutory recommendations to Congress, or both.

From an operational standpoint, the Office's electronic registration system was fully implemented in 2008 by adapting off-the-shelf software. It was designed to transpose the paper-based system of the 20th century into an electronic interface, and it accomplished that goal. However, as technology continues to move ahead we must continue to evaluate and implement improvements. Both the registration and recordation systems need to be increasingly flexible to meet the rapidly changing needs of a digital marketplace.

¹ The suggestions of the copyright community are described in further detail in Maria A. Pallante, *The Next Generation Copyright Office: What It Means and Why It Matters*, 61 J. COPYRIGHT SOC'Y U.S.A. 213 (2014).

New Programs

Since 2011, the Copyright Office has created several programs to attract new talent and invite robust discussions regarding complex issues. Of special importance are the Abraham L. Kaminstein Scholar in Residence Program and the Barbara A. Ringer Copyright Honors Program. The Kaminstein Program allows leading academics with a demonstrated commitment to the study of copyright law and policy to join the Copyright Office, working as paid scholars on mutually beneficial projects. The Ringer Copyright Honors Program offers 18- to 24-month paid fellowships for top law school graduates and other attorneys in the early stages of their careers. Ringer Fellows are selected based upon their exceptional ability and interest in copyright law. In addition, the Office created a program by which professors and their students may supplement the research needs of the Office on projects of mutual interest.

The Copyright Office has also launched two programs in the area of outreach and education. Copyright Matters is a series of public lectures in which artists, academics, public officials and members of the copyright marketplace discuss the practical implications of copyright law in the 21st century. Since 2011, the Office has hosted fifteen Copyright Matters events, including: "Current Developments in the Motion Picture Industry"; "The American Songwriter"; "Nimmer on Copyright: Celebrating 50 Years"; "Best Practices in Fair Use"; "Copyright Conversations with the United Kingdom"; and programs celebrating the 100th anniversaries of the Authors Guild, the Dramatists Guild and ASCAP, respectively. The Copyright Academy offers in-depth classroom training to Copyright Office staff on various aspects of copyright law. Since we launched it in 2013, five courses have been completed, and 110 Office staff have received certificates of completion.

Recordation System

The system by which copyright documents are recorded, including, for example, transfers, licenses, and security interests, has not been fundamentally changed in many decades. Recording is now a cumbersome and costly process that requires manual examination and data entry. How to bring it online has been a major focus of the Office. In the past two years, the Office has held three hearings, published several sets of public questions, and engaged with a broad variety of customers. It was a particular focus of the Office's first Kaminstein Scholar, Professor Robert Brauneis of George Washington University Law School, as well as its first academic research partner, Stanford Law School, under the tutelage of Professor Paul Goldstein.

The recordation system is extremely important because it has the potential to connect registration information (which is a starting point based on when a registration certificate is issued) to the ongoing chain of commerce for a particular work (which could span decades). It provides information regarding who has acquired what exclusive rights and whether and how copyright ownership has changed hands. How we transform the recordation system from a 20th century paper-based system to a 21st century digital platform is a key question that could have long-term consequences for the global

marketplace. The Office is hopeful that we will have the resources and the technological flexibility to make this system authoritative and optimally useful to authors, businesses, technology platforms, researchers, and the public.

Fee Study and Schedule

On May 1, 2014, the Office implemented an updated fee schedule, following a two-year study and public comment opportunities. The general fee for registration is \$55, up from the \$35 fee set in 2009. (The 2009 fees were discounted to incentivize use of the new electronic system.) However, drawing on its authority to take into account the objectives of the copyright law, the Office retained the \$35 fee for single authors filing applications for single works. The Office also adopted new fees for the filing of statements of account by cable and satellite operators who avail themselves of statutory licenses, as directed by Congress under the Satellite Television Extension and Localism Act of 2010, or "STELA."

As required under the statutory framework, the Office carefully considered its costs in proposing and implementing its new fees. At the same time, it is important to realize that the costs of the Copyright Office cannot be wholly or precisely accounted for in light of the fact that the Office's technology is intertwined with and partially offset by the technology infrastructure of the Library of Congress, which is funded by appropriations and at the heart of the Library's overall operation.

Legal and Policy Work

As this Committee conducts a comprehensive review of the Nation's copyright laws, the Copyright Office is actively supporting the effort. The Office is leading multiple studies, public roundtables, and interagency discussions on a variety of urgent issues, from the statutory and regulatory framework for music licensing to the scope of exclusive rights for authors under the WIPO Internet Treaties to the problem of orphan works and outdated library exceptions. The Office published a major report last year regarding the creation of a voluntary small claims mechanism that would allow both copyright owners and those responding to infringement claims to avoid the significant burden and costs of federal court litigation.

Since 2011, the Copyright Office has delivered five policy studies to Congress. In addition to Copyright Small Claims (September 2013), these are: Resale Royalties: An Updated Analysis (December 2013), Federal Copyright Protection for Pre-1972 Sound Recordings (December 2011), Legal Issues in Mass Digitization: A Preliminary Analysis and Discussion Document (October 2011) and our Report on Marketplace Alternatives to Replace Statutory Licenses (August 2011). The Office is completing three additional studies in the areas of orphan works/mass digitization, music licensing, and the making available right, respectively.

As the Copyright Office supports and advises Congress on ways to address these and other policy issues, it is reviewing a range of statutory, regulatory, and voluntary solutions that would make the copyright law function better. At the same time, the Office is working

collaboratively across the government as the Administration considers its objectives regarding the intersection of copyright law and the Internet (under an Internet Policy Task Force of the Commerce Department). The Office's relationship to the Administration is defined by statute.²

Likewise, through the Office of Policy and International Affairs, which is headed by one of four associate registers, the Copyright Office has continued its workload in bilateral and multilateral arenas. We continue to participate on the interagency IP teams led by the United States Trade Representative in the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (T-TIP) negotiations. The Office also participated in negotiations and diplomatic conferences of the two recent WIPO treaties, the Beijing Treaty on Audiovisual Performances (2012) and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013), efforts led by the U.S. Department of State and the U.S. Patent and Trademark Office. We also continue to work with our interagency colleagues to review and assess foreign copyright laws.

Finally, the Copyright Office carries a significant legal and regulatory workload, which is handled principally by the Copyright Office General Counsel and her staff, though frequently in partnership with the Associate Register of Copyrights and Director of the Registration Program. The Office is responsible for issuing regulations to administer the Register's functions and duties under the Title 17, including rules governing the national registration and recordation systems and certain rules affecting statutory licenses. It also handles the bulk of the work related to the triennial rulemaking mandated by the Digital Millennium Copyright Act to consider exemptions to that Act's anti-circumvention provisions. It is responsible for reviewing decisions of the Copyright Royalty Board to ensure that they comply with the Copyright Act. In addition, the Office works closely with the Department of Justice on litigation matters. For example, the General Counsel's office was closely involved in two major pieces of copyright litigation recently before the Supreme Court: *Petrella v. MGM*, involving equitable defenses to copyright infringement, and *Aereo v. ABC, Inc.*, involving the interpretation of the public performance right in relation to Internet retransmission of broadcast television.

OBSTACLES AND OPPORTUNITIES

The Copyright Office is very leanly funded. For fiscal year 2014, we have a budget of \$45 million, which breaks down as follows: 1) spending authority in the amount of \$27.9

² As a general matter, Section 701 of title 17 sets forth a list of functions of the Register of Copyrights, including providing information and assistance to federal departments and participating in international meetings. More specifically, the Undersecretary of Commerce for Intellectual Property (who is also the Director of the United States Patent and Trademark Office), a Senate-confirmed advisor to the President on intellectual property, is required by law to consult with the Register "on all copyright and related matters." 35 U.S.C. § 2(c). Likewise, the Register serves as a statutory advisor to the Intellectual Property Enforcement Coordinator, a Senate-confirmed position that was created by Congress in 2008 and is in the Executive Office of the President. 15 U.S.C. § 8111(a), (b)(3); Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. 110-403, tit. III, 122 Stat. 4256, 4264.

million (congressional approval to spend this much from the fees we collect for services); and 2) another \$17.1 million in appropriated dollars.³

Since 2010, the budget has dropped by \$3.51 million, or 7.2 percent. As a result, the Office has had to rely on its small reserve fund of customer fees to meet operating expenses. Congress sometimes offsets the Office's request for appropriated dollars by the amount it may have available in its reserve fund at the end of the fiscal year, thus further reducing any operating cushion the Office could otherwise use for long-term planning or unexpected urgencies.

Under the current statutory language, we are limited to charging for "the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and other services." Our fee authority does not permit the Office to collect for capital improvements or other forms of investment above the cost it incurs in the ordinary course of business. At the same time, as suggested above, the true cost of the Office's services is unknown, as the infrastructure for the copyright systems is intertwined with, managed by, and subsidized to some degree by the central enterprises of the Library of Congress. Notably, the value of the works acquired by the Library through the Copyright Office—from registration as well as the mandatory deposit provisions of the Copyright Act—is almost double the Office's annual appropriation. This would seem to be a remarkable positive return on our funding, making it one of the greatest government bargains for taxpayers. The question is whether and how we can sustain it.

The Copyright Office staff is smaller than it should be to carry out the volume and complexity of work prescribed by Title 17. The Office is currently operating with 360 FTEs and an authorized ceiling of 439.⁴ The ceiling has been reduced by approximately 100 people over recent years. Having slimmed the Copyright Office over the past few years, we now have an opportunity to rebuild it in a more efficient and flexible manner, replacing dated positions with those of the 21st century. Nonetheless, we will need to attract the kinds of professionals who are capable of performing complex work, whether leading public roundtables and studies on the intricacies of the copyright law or planning for and executing technological developments. In the meantime, we have reorganized existing departments to make them more compatible with their statutory duties. These departments oversee public information and education on the one hand, and public records and repositories on the other hand. I have appointed an Associate Register to head the former and an experienced business leader to head the latter.

As stated, the Copyright Office has a particularly acute need for experienced copyright lawyers and technology professionals, but it also needs to attract qualified registration and recordation specialists who can be trained and promoted over time. Our legal and policy

³ These FTE usage, ceiling, and budget numbers reflect the Copyright Basic portion of the total Copyright Office budget and FTE usage/ceiling. Excluded are FTE usage, ceiling, and budget for the Copyright Office's Licensing Division and Copyright Royalty Board.

⁴ This excludes twenty-four employees in the Licensing Division and the Copyright Royalty Board, both of which are supported by separated funding.

staffs have fewer than twenty lawyers, even though they are responsible for studies, rulemakings, litigation, international negotiations, and policy advice on every conceivable topic of copyright law. Aside from these general staffing challenges, the Office does not have a sufficient number of positions at the senior level pay scale, for example deputies or specialists, to match the volume and complexity of the workload. We will continue our efforts in this regard, working with the Library.

The registration staff is among our immediate concerns. The registration program has been decimated by budget cuts and early retirement packages and has forty-eight vacancies out of a staff of 180 experts. Moreover, about 25% of the registration specialists remaining are approaching retirement. The pendency time for processing registration claims is a source of constant concern. At present it is 8.2 months for paper applications and 3.3 months for electronic applications. However, as discussed above, the level of backlog at any particular point in time is not the only measure of progress with respect to how the Office is performing and whether it is sufficiently poised to absorb the challenges of the future.

The recordation division is operating with only nine employees. This section receives approximately 12,000 new documents for recordation annually, and the current average processing time is around seventeen months. As stated above, the issues relating to recordation are systemic and cannot be significantly ameliorated until we redesign the recordation system and bring it online.

The Copyright Office has a very limited technology shop that addresses application-level support for the existing registration system (twenty-three FTEs and a limited number of contractors). For example, it develops tests and releases software modifications on an iterative schedule. The Copyright Office uses the technical infrastructure of the Library, including its network, servers, telecommunications and security operations. Under this model, there are both synergies and resource challenges. Departments across the Library compete for services and equipment. However, these services do not always support the fact that the Copyright Office is a twenty-four-hour business with a distinct mission. The Copyright Office intersects with a dynamic global marketplace and affects the legal rights and economic interests of those who rely on the provisions of Title 17. In the long run, decisions about technology will not only inform, but also decide the success of the Copyright Office and its ability to interact with and support a modern copyright system. This may mean that the Office will need to absorb more direct responsibility for its needs.

OTHER DEVELOPMENTS

Government Accountability Office Reports

As the Committee and Subcommittee are aware, the Senate Appropriations Committee has in the report accompanying its FY 2015 legislative branch appropriations bill directed the Government Accountability Office (GAO) to examine the Copyright Office's information technology infrastructure. The relevant language is as follows:

The Committee recognizes that the digital revolution has transformed the copyright marketplace and, as a result, the role of the Copyright Office in our economy. The Committee finds that [the] Copyright Office will also need to evolve and adapt to the challenge of these new realities. In fact, the Committee notes that public comments submitted recently by the copyright community indicate that the Copyright Office is currently in need of significant IT and related upgrades in order to be fully interoperable with the digital economy it serves. For example, as the Register of Copyrights has testified, the copyright recordation system is still administered using a paper-based process.

The Committee finds that a modern and efficient copyright process is [an] important component of protecting and promoting creative works and includes \$1,000,000 for modernizing the Copyright Office's information technology infrastructure. However, the Committee wishes to ensure that taxpayer investments in modernizing the Copyright Office will be used efficiently and effectively, and that existing infrastructure and resources will be used to the fullest extent possible. Therefore, the Committee directs the [GAO] to examine the Copyright Office's current information technology infrastructure and identify any deficiencies or obstacles to serving the copyright community in a modernized environment. GAO shall provide an evaluation on how the Copyright Office can best [take] advantage of existing resources, including commercial off-the-shelf technology, to modernize its current capabilities. Finally, GAO shall also provide a legal and technical evaluation of the information technology infrastructure that the Copyright Office shares with the Library of Congress. The Committee directs GAO to submit a report summarizing these findings to the Committee within 60 days of enactment.⁵

The GAO is also conducting an audit of the Library's overall technology enterprises pursuant to a request made by the House Appropriations Committee as part of its FY 2015 legislative branch appropriations bill.⁶ GAO staff are at work on both of these audits, and the Copyright Office is assisting them in both contexts.

Intercollegiate Broadcasting System v. Copyright Royalty Board

The Committee may be aware that, in 2012, the U.S. Court of Appeals for the D.C. Circuit addressed the constitutionality of the Librarian of Congress's role in the appointment of officials responsible for administering the copyright laws in a case called *Intercollegiate Broadcasting System, Inc. v. Copyright Royalty Board* ("IBS").⁷ Because the court's decision addresses the disposition of copyright functions generally, parts of the decision are applicable to the Copyright Office as well as the Copyright Royalty Board.

In the case, a company challenged a decision of the Copyright Royalty Board (CRB), arguing in part that the Librarian's appointment of the CRB's judges violated the Appointments Clause. The Appointments Clause requires principal officers of the United States to be appointed pursuant to presidential nomination and Senate confirmation, and

⁵ S. Rep. 113-196, at 40-41 (2014).

⁶ H. Rep. 113-417, at 14 (2014).

⁷ 684 F.3d 1332 (D.C. Cir. 2012).

requires inferior officers to be appointed only by the heads of executive departments. Previously, the kind of work performed by the CRB (involving rate-setting and the distribution of royalties) was performed by specially appointed arbitration panels and before that, by a free-standing administrative tribunal. In 2004, Congress replaced the arbitration system (the Copyright Arbitration Royalty Panels) with the current system of Copyright Royalty Judges, placing the Judges under the Librarian.

In the *IBS* case, the D.C. Circuit held that the Copyright Royalty Judges were acting as principal officers, and that their appointments thus violated the Appointments Clause. However, the court resolved the problem by invalidating certain language in the CRB statute to make clear that the Librarian could remove the Judges at will, thus rendering the Judges inferior officers within the meaning of the Clause.

The decision also provides that for purposes of the appointment of inferior officers under the Appointments Clause, the Librarian is the head of an executive department because he is appointed by the President, confirmed by the Senate, and removable at will by the President.⁸ As the court explained, “the powers in the Library and the [CRB] to promulgate copyright regulations, to apply the statute to affected parties, and to set rates and terms case by case are ones generally associated in modern times with executive agencies rather than legislators.”⁹ In considering the rather unique constitutional structure of the Library as an agency, the court held that “[i]n this role, the Library is undoubtedly a ‘component of the Executive Branch.’”¹⁰

CONCLUSION

Thank you, Mr. Chairman, for your attention to the Copyright Office and our overall copyright system. As always, the Copyright Office is available and willing to assist the Congress with further questions or assignments.

⁸ The Librarian was not originally a principal officer of the United States subject to appointment by and with the advice and consent of the Senate. But in 1897, Congress provided that the Copyright Office should be a separate department of the Library of Congress and created for the first time the position of Register of Copyrights to head it. In doing so, Congress was aware of the importance of the copyright system and related questions of constitutional law. Accordingly, as part of that legislation, Congress specified that the Librarian would henceforth need to be subject to Senate confirmation. Act of Feb. 19, 1897, ch. 265, 29 Stat. 544. The Librarian has been subject to this method of appointment ever since. 2 U.S.C. § 136.

⁹ 684 F.3d at 1341-42.

¹⁰ *Id.* at 1342 (quoting *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 130 S. Ct. 3138, 3163 (2010)). Cf. 2 U.S.C. § 166(d)(5) (functions of Congressional Research Service are to prepare and provide information to Members of Congress and committees “to assist them in their legislative and representative functions”).

Mr. COBLE. Without objection.

Ms. PALLANTE. Chairman Coble, I am aware that you have presided over copyright issues on this and former Committees for close to 3 decades, including as Chairman. As you prepare to retire, I am moved to say that today may well be the last time that a Register of Copyrights will appear before you. Therefore, on behalf of myself, my predecessors, and the entire staff of the U.S. Copyright Office, I wish to personally thank you for your dedication to our Nation's copyright system and for your service to us. We will miss you tremendously, as will the rest of the copyright community. Thank you. [Applause.]

Mr. COBLE. Thank you. I appreciate that. [Applause.]

Thank you. You all know how to make an old man feel good. I thank you very much for that, for your generous words, Madam Register. I appreciate that. I appreciate the response from the audience as well. It is good to have all of you with us today.

I think you beat the timeframe too, Madam Pallante. I think you beat the illumination of the red light.

Understanding there are many different views on substantive copyright law issues, do you think, Ms. Pallante, there is a general agreement on the importance of ensuring that the Office itself is properly resourced and modernized for the digital age?

Ms. PALLANTE. Well, Mr. Chairman, I haven't heard anybody say stop looking into modernizing your operations and don't bother going into the 21st century. So in answer to your question, I think copyright owners have legitimate concerns about our services, many of which were designed in the analog age, and I think the tech sector would like to see our database be more interoperable and authoritative so that they can also rely on it for their work in the chain of commerce.

Mr. COBLE. I thank you. Old habits die hard is why I put the question to you.

Do you have any business plans or credible estimates of what it would take to build a substantial 21st century digital Copyright Office?

Ms. PALLANTE. I am afraid I don't, in part because I think we have the same fee structure we have always had, which doesn't—I would need to work with you and work with the Committee to figure out what portion of that should be fees and what portion of it should be appropriated dollars, because there are things that we can do that are reasonable, and there are things that we can do that are really incredible, and we may have to figure out what the goals are together.

I will say that when the electronic system was implemented in 2008, before my time, it was I think reasonably intertwined with the Library's existing enterprise. I think that subsidy has made it difficult to figure out what our actual costs are. So, in other words, we share that with the entire Library as a cultural institution, and trying to figure out what portion of their budget is attributable to us is not something that has really been done. That kind of cross-accounting has not been done.

Mr. COBLE. I thank you for that.

Yesterday, Madam Register, it was reported that Representative Greg Walden criticized the FCC for having spent \$352 million on

IT over the last 5 years. How much have we spent on the Copyright Office during the past 5 years, and how much do you think we have dedicated to the Office's IT for consumers?

Ms. PALLANTE. We have a very, very minuscule budget for IT because our IT department has 23 people in it, plus a number of contractors. It really is a liaison office to the Library. The Library's IT budget is somewhere in the neighborhood of \$60 to \$100 million. You would have to ask the Library how that breaks down completely.

So again, we don't have a mature, independent IT structure in the Copyright Office. We have people who help to develop software modifications to existing programs.

Mr. COBLE. I thank you again, Madam Register, for your generous words. I appreciate that very much. In fact, for the record, I think our Subcommittee has enjoyed a very excellent rapport with not only you but your immediate predecessor. Remember me to her, if you will, when you see her.

I am now pleased to recognize the gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you very much, Mr. Chairman.

Madam Register, can you outline some of the steps that have been taken to improve the copyright registration system in light of the fact that many businesses offer works by streaming or displaying them with an array of technologies?

Ms. PALLANTE. Yes. This is one of the issues I think that keeps the leadership of the Copyright Office up at night. We are dealing with multiple problems. We have an electronic interface for registration, but that is based on the paper-based system. In other words, the paper system was transposed into an electronic interface. We have yet to go to the next generation of really having the real advantages of a 21st century digital system.

We also have a statute that was written in—well, enacted in 1976, written for 20 years prior to that, and it envisions a system of analog works. So it envisions a process whereby you send us works, we examine them, they are available for the Library's collection.

Mr. NADLER. Does that statute need to be revised to account for digital?

Ms. PALLANTE. I'm sorry?

Mr. NADLER. Does that statute—did you just imply that you are mandated to do things in analog and that we should revise that to allow for digital?

Ms. PALLANTE. I didn't quite say that. What I said is that the statute did not anticipate the tensions that we have now that works are digital.

Mr. NADLER. Okay. I think you may have just answered part of the next question, which is what are some of the improvements that may be needed at the Copyright Office in the future?

Ms. PALLANTE. Yes. I think we really need to figure out, first and foremost, what we want the registration system to be. So we may not need the best possible quality of a work for purposes of examining it and keeping it safe for litigation purposes. That "best copy" concept was designed for the Library of Congress so that it could

preserve and have access to the best work available in the marketplace.

The Library has separate provisions, like every national library in the world does, where it has the right to acquire copies of published works for the national collection. That is different than registration copies.

What we have done in our copyright system, and it was done to protect copyright owners, or at least to relieve them of the burden of having to comply with dual systems, was say that if you register, we will use those copies for purposes of the provisions regarding the national collection.

I think where we are in the Copyright Office is do we now need to kind of step back and maybe segregate those provisions? So the registration system works for copyright owners and the public record, and the Library has very clear regulations and statutory instruction about what it can and cannot acquire. And if it does acquire digital works—and I wanted to say for a moment that the Library of Congress is an incredible cultural institution, and it has actually preserved works that copyright owners have failed to preserve over the years.

But assuming you want it to have access to digital works in the future, we do need to have safeguards because we are talking about copyrighted works.

Mr. NADLER. That was my next question. How will the Copyright Office be able to meet the challenge of enhancing the security of deposited digital works?

Ms. PALLANTE. We really need to apply our all-hands-on-deck on this question. Operationally, we share servers with the Library, and I don't think we—well, I know—

Mr. NADLER. Is that a danger to the security?

Ms. PALLANTE. I think so. Nothing insidious and terrible has happened, but it is certainly a risk. Again, it goes back to—

Mr. NADLER. Should we consider severing your sharing that with the Library, and would that be very costly?

Ms. PALLANTE. I think optimally we should have separate servers for the registration system than the Library has for its other business, yes.

Mr. NADLER. And do you have any—are we talking millions, billions, thousands?

Ms. PALLANTE. Well, here is the question that I grapple with. What is the reasonable cost of a registration system if the copyright owner and the public are getting the kind of return that they want? And if we are not charging \$55 but we are charging—

Mr. NADLER. I'm sorry, you misunderstood my question. I am not asking about the value. What is the magnitude—what would it cost to give the Office a separate service from the Library?

Ms. PALLANTE. What would it cost as opposed to how to fund it you mean?

Mr. NADLER. Right.

Ms. PALLANTE. I don't know.

Mr. NADLER. What magnitude are we talking about? Millions or a billion? Do we have any idea?

Ms. PALLANTE. At a very high level in terms of modernizing the Office, I think it is an investment of somewhere in the neighborhood of \$150 million.

Mr. NADLER. Over a time period.

Ms. PALLANTE. Of that, you could say half of that must come from fees, do some public-private partnerships, be creative.

Mr. NADLER. And my last question, since I have the orange light, how has the registration program been hurt by budget cuts and early retirement packages?

Ms. PALLANTE. It has really been cut to the bone. We have huge vacancies, and we have the kind of staff that requires several years of training to get them to the point where they are applying the law and the regulations and the Compendium accurately so that courts and others can rely on it.

So they are really exhausted, and then they are dealing with an electronic system that sometimes crashes, doesn't work all the time, and isn't anywhere near the generation of services that copyright owners want.

Mr. NADLER. So we are talking about both operating and capital costs there.

Ms. PALLANTE. Correct.

Mr. NADLER. Thank you very much.

Ms. PALLANTE. Thank you.

Mr. NADLER. My time has expired, Mr. Chairman.

Mr. COBLE. I thank the gentleman.

The distinguished gentleman from Pennsylvania.

Mr. MARINO. Thank you, Chairman.

Good afternoon.

The U.S. Copyright Office was created in 1897, I believe. Then, music was written on paper, and recorded music was listened to on a phonograph, starting with wax records, so to speak.

Music creators and listeners use computers and mobile devices to create, distribute, purchase, and listen to music. So could you please tell me, would moving your Office into the 21st century cut down on unnecessary litigation, and how?

Ms. PALLANTE. Yes, sure. Our role, I think, in the 21st century is to have the most authoritative, accurate information about copyright ownership and licensing terms available anywhere, globally. And if people can find that kind of information by clicking on a record and getting the licensing terms and being sent to a private registry, you begin to see how our role can really facilitate the licensing marketplace.

Mr. MARINO. The Copyright Office is not an agency or even a sub-agency, and you do not report to the President; correct?

Ms. PALLANTE. Correct. I report to the Librarian of Congress.

Mr. MARINO. Okay. How would your Office in the United States be seen internationally if your Office were independent, its own entity?

Ms. PALLANTE. Well, I will say two things. In deference to all of the Registers who have come before me and all of the talents that they had, the Register position is recognized internationally. But we have this system with our own interagency process where we have people from PTO and elsewhere in the Administration really leading the international discussions on copyright law because of

our unique situation in terms of where we are seated. So presumably we would have more authority and recognition if the position were different.

Mr. MARINO. Could you give me an example, could you give us an example of, if you need to do something in your Office, whether it is equipment-wise, whether it is rearranging more space, anything at all, what is the process you must go through?

Ms. PALLANTE. Well, again, we are a department of the Library of Congress like every other department in the Library of Congress. So for all of those kinds of infrastructure questions, they go through central Library practices and processes.

Mr. MARINO. With all due respect to my colleagues at the Library of Congress, which are fantastic because every time I need something they are on it just like this, but you are a copyright lawyer?

Ms. PALLANTE. Yes.

Mr. MARINO. An intellectual property lawyer?

Ms. PALLANTE. Yes.

Mr. MARINO. You are—I am making an assumption here—and I think it is rather accurate. You are the expert over there, but yet you have to go through an unorthodox chain to even make your office operate back in the 19th century standards; correct?

Ms. PALLANTE. Yes. Another way to look at that—I think about this a lot, as you might imagine—there is no position in the government like the Librarian of Congress. It would be a little bit like having the head of the Patent Office also run the Smithsonian Institution. Constitutionally, that is the situation that you have. And I would say for almost 120 years, it served the Nation fairly well.

What we are experiencing now is an explosion of the prominence of the copyright system. So I understand this to be about what is best going forward.

Mr. MARINO. Well, no matter where we go today, no matter where we go today, my kids, my mother, who is 82 years old, carries one of these and does all kinds of things on it, and you are still in a position where you are looking at documents.

So I am speaking on, I think, behalf of a lot of my colleagues. You need to be brought into the 21st century. You need to be an independent entity. You are part of the executive branch, and I think your job is so important and you have done such a fantastic job, as your predecessors have done, I think you should report to the President. With your ability and your foresight, I am sure you could take that Office into the 22nd century for us.

So, thank you, and I yield back.

Ms. PALLANTE. Thank you, Mr. Marino.

Mr. COBLE. I thank the gentleman.

The distinguished gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Coble.

We have appreciated you coming before us and explaining your circumstances.

Ms. Pallante, in your written testimony, you mention a 7 percent decrease in the Office's budget since 2010. What effect has that had on the ability of the Office to fulfill its duties, and are there other financial constraints that you believe are limiting the Office from running more effectively?

Ms. PALLANTE. Thank you, Ranking Member Conyers. We immediately—one of the first things I experienced as Register right after my appointment was to do an early-out buy-out to move people into retirement, for people who were willing to do that, to reduce the staff.

I will say, that is not necessarily a terrible thing to go through because we have lot of people who worked for decades in the Library of Congress and in the Copyright Office, and it creates the opportunity after those good years of service to rethink positions, digital positions instead of, say, cataloguers.

The problem is we can't replace them because we don't have the budget to fund them, and we are really, really small. I think we are smaller than we have ever been in modern times. The irony for us is that we are busier than we have ever been.

Mr. CONYERS. So creating a more aggravated problem. Well, since 2008, the Copyright Office has moved into an electronic registration system. How has that worked out, and what needed improvements might there be required?

Ms. PALLANTE. Yes, that was a big moment for the Copyright Office. It wasn't on my watch. I was still in New York in the private sector. But I think our issue is that we haven't moved past it. That was a good foundational first-generation system. We haven't gotten to recordation. That is still paper-based. And we haven't made the registration system truly interoperable, meaning that we can't necessarily have people send us deposits of their works because we can't accept them because our system won't handle them. We don't connect through metadata to ASCAP or BMI or SoundExchange or other registries.

Mr. CONYERS. So what do they have to do?

Ms. PALLANTE. We need to rethink the whole thing, drawing on the tremendous expertise of the copyright community from here to California and back.

Mr. CONYERS. What has the Office done to rectify current issues with recordation, and what are the major concerns thereto?

Ms. PALLANTE. Okay. So we have done everything we can do without money. We ran numerous public processes, asking people what the system should look like in the future. We had dozens and dozens of meetings. We had three public hearings, one in New York, one in L.A., and one in Silicon Valley. We assigned to the first Abraham Kaminstein Scholar in Residence—which is a program we started based on one of the Registers who presided over the '76 work leading up to that Act—the task of really thinking it through as a scholar, and he is finalizing his report. And now we have options, and the question is how to get to a strategic plan given budget cuts, but also the infrastructure that we have, and do you want to invest in it the way it stands currently.

Mr. CONYERS. Well, we know that you need help fast. What do you see is going to happen if you don't get the funding that you need?

Ms. PALLANTE. Well, there is already a significant gap between our services and the way the copyright marketplace actually operates, so obviously that gap will grow. I will also say, though, as kind of the head of the staff of the Office—this sounds like a weird term—we cannibalize our staff, right? The same people do every-

thing. They register, but then they are writing a compendium that is 1,200 pages long. They are running trade negotiations with USTR, helping Congress, writing significant regulations, and we just aren't big enough and we don't have the depth of experience that we need.

Mr. CONYERS. Thank you very much for your candor.

Ms. PALLANTE. Thank you, sir.

Mr. CONYERS. Thank you, Mr. Chairman. I yield back.

Mr. COBLE. I thank you, Mr. Conyers.

The gentleman from California, the distinguished gentleman, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

Boy, I'll tell you, hearings like this let us know how long it takes to do anything here on Capitol Hill.

Let me run through a couple of quick questions. I think the public and all of us want to sort of make sure it is in the record.

Currently, if I write a book, I can send two copies of the book to you on paper, and you will take them, and then I have a copyright; right?

Ms. PALLANTE. Correct. You have enhanced protection, in fact.

Mr. ISSA. Yes, or I can do nothing and I have a copyright. Is that right?

Ms. PALLANTE. Correct.

Mr. ISSA. What do you do with those two books?

Ms. PALLANTE. We have a repository by regulation, or the Library has the ability to inspect and acquire those deposits and then use them under applicable law.

Mr. ISSA. Okay, which means—

Ms. PALLANTE. That is statutory.

Mr. ISSA. Which means I can check out one of those two books because it is my library, after all.

Ms. PALLANTE. Yes.

Mr. ISSA. Or all of our library.

Ms. PALLANTE. The Library of Congress has arrangements with other libraries and is the—

Mr. ISSA. So for a little over 100-and-some years, this has been kind of how it works. You send your two books in, and Congress can get smarter, and you have the capability. There was a time when you had to send them in to have a copyright. Works that were not sent in simply enjoyed no copyright protection. When did that change?

Ms. PALLANTE. Yep, they went into the public domain. We moved to that system for international compliance purposes, or to become more internationally harmonized, with the '76 Act. That was a sea change for the United States.

Mr. ISSA. So basically we took those things which people wanted to protect and turned it into everything is protected.

Ms. PALLANTE. That is one way to look at it, for sure.

Mr. ISSA. And this is interesting because we did it in harmony with the rest of the world that normally doesn't respect these things very well. So, always interesting.

And you already stated that we haven't come into the digital age particularly well because if I want to make sure that you have cop-

ies of everything digitally, every day, every newspaper, et cetera, et cetera, you are not prepared to accept those.

Ms. PALLANTE. It is difficult.

Mr. ISSA. Well, "it is difficult" is an interesting thing. We say that a lot in Washington. If the Wall Street Journal and 400 other newspapers tried to send you, either on paper or digitally, one copy digitally, two copies on paper every day, you couldn't handle them, could you?

Ms. PALLANTE. Well, we don't handle them well. We accept them. We register them. But here is where we are going with our—

Mr. ISSA. Look, I saw Indiana Jones and the Raiders of the Lost Ark. They accepted the Ark, too, in that movie, and they have their best people working on it. [Laughter.]

Ms. PALLANTE. That's right.

Mr. ISSA. We are here today because you represent the most arcane part of government in many ways.

Ms. PALLANTE. Thank you.

Mr. ISSA. We budget one part. We have you report to somebody who, in fact, doesn't really have the same mandate, while over at the Department of Commerce we have the primary oversight that we do, which is the Patent and Trademark Office.

Now, I am not going to put you on the spot, but hypothetically, if we harmonized the functions of the PTO and harmonized your functions in some acceptable way, wouldn't that enhance the efficiency of dealing with digital and non-digital media, dealing with copyright, trademark, patent and, if you will, the potpourri of evolving intellectual property?

Ms. PALLANTE. I think so, yes.

Mr. ISSA. Wouldn't it also harmonize or improve, assuming that they all worked together, what happens when there is an alleged copyright violation and people want to get to justice? You don't have administrative law judges, do you?

Ms. PALLANTE. No.

Mr. ISSA. They do, don't they?

Ms. PALLANTE. We don't have enforcement authority of any kind.

Mr. ISSA. So we are dealing with 1897 thinking even after a 1976 enhancement which, by the way, there was an Internet then, it just wasn't available to anybody in the public.

So just to wrap up, budget is always a problem, but you are not even beginning to be positioned to handle well the absorption, the cataloging, the referencing and the searching of the media being produced in the United States, let alone the rest of the world.

Ms. PALLANTE. I am afraid that is accurate.

Mr. ISSA. And in a digital age, if we are going to protect copyright and we are going to make, if you will, works available to the public, both of those have to change.

Ms. PALLANTE. Yes.

Mr. ISSA. Now, let me close with just one question because everyone is talking about, well, maybe we ought to just move you to PTO. But let's ask one question, because I think it is more complex than that.

Isn't it true that the function of the Library of Congress to enhance and make available for education and informational pur-

poses to the United States and ultimately the world, that is a mandate that the Librarian has?

Ms. PALLANTE. Yes.

Mr. ISSA. And yours is, of course, the protection. Don't we have to modernize both of them, the availability that the Librarian has and the systems for protection, including metadata that allows for searches? Aren't those both things that have to be done on this Congress' watch?

Ms. PALLANTE. Yes, I think that is an excellent way to state it and a very fair way to state it for the Library. They need to be a 21st century institution as well. They are a leader among cultural institutions.

Mr. ISSA. Thank you, Mr. Chairman. I think we have outlined some of the problem.

Mr. COBLE. I thank the gentleman from California.

The distinguished gentle lady from California, Ms. Chu.

Ms. CHU. Thank you, Mr. Chair.

I think most people are surprised and perplexed when they learn that our Nation's Copyright Office is housed under the Library of Congress because your missions are very different. The Library is focused on preservation, while the Copyright Office is focused on recording and registering works and, most importantly, instituting legal and economic rights protections, and your technical needs are so different because the Library is that of preservation, whereas your Office functions like a 24-hour business that intersects with the global marketplace. And I have been astounded to learn of the implications of this.

First, you, the Register, are authorized to establish regulations, but such regulations are subject to approval by the Librarian, whose specialty is not copyright.

Secondly, you are able to collect fees, but you have no control over what happens with those fees. In fact, they are managed by the Library staff.

Thirdly, on security, the Copyright Office should be ensuring the security of works, including digital works, but the mission of the Library is to share works with the public.

And finally, there is the issue of the appointment and authority that you have. Similar positions such as yours, the Intellectual Property Enforcement Coordinator and the Executive Director of the Patent and Trademark Office, this is a presidential appointment and you report to the President. They report to the President. But instead, your position is appointed by the Librarian and you report to the Librarian.

So can you talk about these specific challenges and how they impede your desire to make the Copyright Office thrive in a digital economy and support a modern copyright system?

Ms. PALLANTE. Yes. Thank you for those questions.

I will say this. Everything that you set forth is true and was relatively without incident for a long time, decades, didn't cause any harm. I think, again, we are now seeing kind of growing pains and natural tensions between the Library as a library and the Copyright Office as the copyright system of the United States.

So I do feel like we are at a point where there either have to be safeguards put in place within the current institution or you really

need to think on this Committee about new paradigms, maybe some of the things that you were discussing earlier.

Interestingly, the IPAC was created recently, right? In 2008. And the Under Secretary in the mid-'90's. Those positions intersect with the Register's authority by statute, but you are correct that they are much higher elevated than the Register position is.

I think what you are really asking me is who is the head of the copyright system, and the truth is the Librarian of Congress is the head of the copyright system for purposes of the Constitution. The Register works under the general direction and supervision of the Librarian. So there are many duties in the Copyright Act that say "the Register shall," but at the end of the day it is really your Librarian, all of your Librarians back to 1897, who have had responsibility for the system.

Ms. CHU. And so to be specific, I brought up the example of regulations that are written.

Ms. PALLANTE. Yes.

Ms. CHU. These, and security of works. Could you—

Ms. PALLANTE. I don't know if this is so different from agencies outside of the IP space, but basically the expert in the agency and, in turn, my experts on my staff conduct rulemakings, prepare regulations. We work under the APA, by statute. The Library doesn't. But I send them to the Librarian for signature, and he has to approve them. So it really isn't just a rubber stamp, and that is how it works.

There could potentially be a conflict in the future. We haven't had that, really, to date. So I think, again, if we are talking about the future, that might be a better way to think about these issues.

For example, if the Register were to say I don't think we should be accepting digital deposits without copy controls in the registration system because it is a conflict for the statute and for the people registering, technically the Librarian has a right to say "that is what I want."

Ms. CHU. In fact, can you guarantee the security of digital works right now?

Ms. PALLANTE. No, because we don't have—well, I can't. I don't have control of the IT system. My avenue for that is to make the case internally. And in defense of the Library of Congress IT department, they are doing a lot of different things. We are not their only client or customer.

Ms. CHU. And what are the implications of not having control over your own fees?

Ms. PALLANTE. It is a legal question. People are paying us for services, and that money is routed through centralized IT systems. So on the one hand, you have synergies. On the other hand, you don't have control of the product that you are delivering for those fees. So what stakeholders have said to me is that they—I mean, we are talking about some stakeholders who invest tens of millions of dollars in their copyrighted works. So a \$55 fee is not a big deal for them, and I think if they were getting the kind of service that they want, and the security and confidence that they want, they would pay more, and I think our fees are too low for those kinds of copyright owners.

Ms. CHU. Thank you.

I yield back.

Mr. COBLE. I thank the gentle lady from California.

The distinguished gentleman from North Carolina, Mr. Holding. Mr. HOLDING. Thank you, Mr. Chairman.

Ms. Pallante, thank you for being here. I think either in your testimony or in response to a question, we were talking about the Office functioning as the principal advisor to Congress on copyright law and policy, both domestically and internationally. And you also have a duty as the Copyright Office to provide information assistance to other Federal departments and agencies and the Judiciary on copyright law.

So with all of the happening issues in copyright law, I was wondering how many lawyers do you have assigned to these discrete tasks and what percentage of your work is this duty that you have to provide advice to us and others?

Ms. PALLANTE. It is a huge percentage of the work right now because you have had 16 policy hearings in the last couple of years. We have 18 lawyers in the legal departments. A couple of people are actually lawyers and the heads of other departments. But the people doing the legal and policy work number about 18. That is not enough, and we have a particularly acute need for very experienced copyright lawyers who can run the kinds of significant public rulemakings and discussions and policy studies that we are responsible for.

We do everything. Regulations alone could keep that number of lawyers constantly engaged, and that doesn't count getting on a plane and going to Vietnam to help the USTR negotiate a Pacific Rim trade agreement. It doesn't include meetings at WIPO, where we are required to be. It doesn't include thinking through the legal implications of the things you are asking me about, fee structures and technology. So, we don't have enough people.

Mr. HOLDING. Right. Are you able to supplement that at all?

Ms. PALLANTE. Again, we are really good at trying to do things with no money. We have gotten really good at it in the last couple of years.

We created a couple of programs to supplement our staff with short-term costs, as opposed to long-term staffing costs. One is the Kaminstein Scholar in Residence that brought a scholar to us for a year. We will now try to get another scholar to come. That helps immensely because they are extremely capable and talented and quick and can do all the kinds of deep thinking that we need.

We created the Barbara Ringer Honors Program. We got hundreds of applications. We just a couple of weeks ago started our first two Ringer Fellows, one from New York and one from Chicago.

We created a Copyright Matters program to kind of bring people into the Office to help us think about marketplace issues. Chairman Goodlatte has spoken at that. We have had artists. We have had presentations on fair use.

And finally, we created a research partnership with law schools, and our first success with that was Stanford Law School, where two classes in a row under the tutelage of Professor Paul Goldstein, who is a giant in the field, worked on some of our recordation challenges.

So we are trying every which way to bring in talent and support to supplement.

Mr. HOLDING. Right. Mr. Marino brought up the issue of precisely where the Copyright Office sits in the structure of government and who it answers to ultimately. I was wondering, with the very important role that you play as an advisor to Congress and the other agencies on copyright law, is the stature of the Copyright Office within the structure of the government sufficient? Does it impact your leadership role as you are trying to foster our American copyright system?

Ms. PALLANTE. Well, that is a big question. Again, I think over the decades, prior to this recent period that we are in, the Register was given a lot of deference. But you created two positions that now are intersecting in copyright policy in the past 20 years. One is the IPEC, and one is the Under Secretary for Commerce, which is the head of PTO. It is a complicated structure because the PTO's statute says the head of the Patent Office must confer with the Register on copyright policy issues.

But I think what you are asking me is, is the head of the Copyright Office at the upper echelons of the Federal Government in the Administration like these other positions?

Mr. HOLDING. Yes.

Ms. PALLANTE. The answer is clearly no.

Mr. HOLDING. Do you have a seat at every table that you want to sit at to influence policy?

Ms. PALLANTE. And many stakeholders have said that to us, and we don't take it personally, but the answer, of course, is we are not.

Mr. HOLDING. And how does that inhibit you carrying out the responsibilities that you think Congress has vested you with?

Ms. PALLANTE. I think we are not in the room all the time, right? We are not leading the delegations as the substantive agency. We are not necessarily in all of the discussions of the Administration. We are a little bit confused about which branch of government we are in following this IBS-CRB case that came down and said all of our functions are executive branch.

So I think it is a complicated structure, and to be fair to my staff, I think people make it work at the staff level across this inter-agency process, but nobody really understands it.

Mr. HOLDING. And if, indeed, which I think you are part of the congressional branch, the legislative branch, whether or not there is a fiduciary responsibility or not, we have that. But perhaps we in the legislative branch are not being adequately represented because of your exclusion from some of these tables where policy is being made.

Ms. PALLANTE. It is a fair point.

Mr. HOLDING. Thank you.

Thank you, Mr. Chairman.

Mr. COBLE. I thank the gentleman from North Carolina.

The distinguished gentleman from New York, Mr. Jeffries, is recognized for 5 minutes.

Mr. JEFFRIES. Thank you, Mr. Chairman.

And thank you, Ms. Pallante, for your presence here today, as well as for your leadership.

I think I want to pick up where my colleague left off and ask you about the recent *IBS v. Copyright Royalty Board* case. I believe you are familiar with the case. You referenced it in your written testimony; correct?

Ms. PALLANTE. Correct.

Mr. JEFFRIES. And the case involved a decision by the D.C. Circuit, I believe, that held that in promulgating copyright regulations, setting rates and terms, the Library of Congress is undoubtedly a component of the executive branch. Is that correct?

Ms. PALLANTE. That is what the case says.

Mr. JEFFRIES. Now, it was already a complicated mix related to your structure, as discussed during this hearing. How does this decision impact what was already a complicated situation? How do you interpret the decision, and what guidance can you provide to us as to how we should interpret the decision and what it means in terms of how we move forward?

Ms. PALLANTE. Thank you. I think it is a fairly significant decision. On the one hand, it confirms that the Library of Congress is like no other agency in the Federal Government in that it is clearly a hybrid agency. You have the copyright functions, clearly in the court's opinion, being executive branch in nature; and then you have, for example, the Congressional Research Service, which can only be legislative, in the same agency. As I said earlier, I think you have this position where the Librarian of Congress has really kind of an incredibly Herculean job where you are running Library functions, legislative functions, and then also executive branch copyright functions.

You are right that these issues are not new. One of the things that is very interesting to me is that from 1802 to 1897, the Librarian of Congress was not a Senate-confirmed position. It was when Congress in 1897 formalized the copyright system within the Library that Congress—and it is very interesting to go back and read this, speaking about constitutional issues that have now popped up again—said these issues must be constitutionally correct. They must flow constitutionally so that the Librarian of Congress must be Senate confirmed. The copyright system affects the legal rights, economic interest of those who rely on it.

Mr. JEFFRIES. Right. Well, the copyright system, in fact, or Congress' power to legislate copyright and intellectual property indeed stems from Article 1, Section 8, Clause 8, the United States Constitution, which is, I gather, why the Judiciary Committee has jurisdiction over this very important area of law.

Now, you mentioned in your testimony that the agency finds itself in a situation where copyright issues have become increasingly complex, and at the same time our resources have become increasingly strained, a very difficult situation to be in. Could you clarify what has increased the complexity of the copyright landscape?

Ms. PALLANTE. Well, the digital revolution has made it more complex. And so where people used to, in the chain of commerce, work with analog physical items, CDs and books and DVDs, they are now getting their content on mobile devices and digital platforms. So copies may not be involved.

It may or may not be a generational thing as well. I happen to have teenagers. They don't want to own anything. They just want access to it. So it is this real focus on display and access and streaming, making the public performance right arguably more important in the future than the reproduction rights and distribution rights have ever been. So we have all of that coming into the mix.

Then that requires us in our registration system to also make those shifts. How do we examine a work that is really only made available to the public through streaming?

Mr. JEFFRIES. Given the increased complexity as you have laid out, and I think in a manner that is shared by a significant number of people in this institution, clearly in my view that suggests that we have got to look at providing the agency with the resources needed to deal with an increasingly complex landscape.

But does the complexity also suggest, in your view, that it is reasonable for us to take a hard look at what an appropriate structure would be in the 21st century?

Ms. PALLANTE. I think you have to, and I appreciate the question. I will say it this way. A 21st century legal framework requires a 21st century agency, and the structure, the budget, the IT, the principal duties, the stature, all of those come into play as you look at the question, I think.

Mr. JEFFRIES. Thank you very much.

I yield back.

Ms. PALLANTE. Thank you.

Mr. MARINO [presiding]. Thank you.

The Chair now recognizes the congresswoman from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

And thank you, Madam Register. It is good to see you.

Ms. PALLANTE. Thank you.

Ms. LOFGREN. As we are enmeshed in this sixth tri-annual review, it just reminds me of Congress' obligation to reform Section 1201 to prohibit not only infringing action and to not tie up innocent use. I think in a way we have had an opportunity to do—"experiment" isn't the right word, but to see what happens when legitimate content is offered and pirated content is available. The public goes to the lawful content. I mean, there are always some outliers, but in overwhelming numbers that is what the public wants to do, and I think that is something we didn't know for sure, but I think it is a very welcome discovery.

I think we have also seen that when we don't too tightly tighten up the circumvention, we promote innovation. You take a look at the app market, for example. It has just exploded in terms of creativity when we have not tamped down, as you could have using section 1201.

So I think it is certainly not your responsibility. It is our responsibility to make sure we go after infringement, but that we do not squash technological innovation that has nothing to do with infringement.

It is like a broken record. I have been saying that for more than a decade. But it is time for us really to do that, and I think the facts and the developments prove that we don't have to be afraid of doing that.

Just a couple of quick questions. In the Notice of Inquiry that your office released yesterday, I was surprised honestly to see the intent to require separate petitions for each type of wireless device—tablets versus readers versus hotspots versus smart watches—and even a distinction between different kinds of wireless and connected e-readers and tablets. It strikes me that this is wrong.

Now, by dividing or subdividing wireless devices into different categories, it seems the government would be protecting not copyrighted work but business models, and that is not our job. Our job is to provide protection to material that is protected under copyright. It is not to pick winners and losers among business models. So I have a deep concern about that. There was a huge uproar, as we know, about the ruling last year on not unlocking cell phones. The Committee has even addressed that, although not as successfully I think as we had hoped. I think we are getting potentially into a much bigger uproar if we go into distinctions between different kinds of readers and the like.

Then the second question—and you can answer them both together—the timeline given in yesterday's notice I think needs review. You mentioned the role of law schools and law clinics, and I think it is a good sign, actually, and Stanford is not in my district but it is 10 minutes out, and it is a great group of young students.

The timeline as published in the notice has everything due at Christmas, and the law clinics that are heavily supported by students are going to be adversely impacted by that timeframe, and I am wondering if we couldn't revisit that because the students, either they are not going to have a break or they won't be around or it is going to be an insane type of workload that we are putting on them. It is 45 days after the notice of rulemaking. I think we need to revisit that, and I would welcome your comments on both of those questions.

Ms. PALLANTE. Yes, sure. Thank you. I would just say on the last question, we frequently extend deadlines once we publish them, usually when a few stakeholders call and say what you just said. The timeline was orchestrated working backwards from when it is due.

Ms. LOFGREN. I understand. But if I could, on that point—

Ms. PALLANTE. Sure.

Ms. LOFGREN [continuing]. From the students' point of view, knowing there is an extension later isn't going to help them.

Ms. PALLANTE. Yes. No, I understand.

Ms. LOFGREN. They need to go to the max doing all-nighters while their exams are due, unless they know it is going to be extended.

Ms. PALLANTE. And we obviously want fresh, young, talented students participating. I hear your point. So I will talk to my General Counsel's Office and we will look at the timeline.

On the first point, it is interesting. We spent a lot of time talking to everybody who has participated in this proceeding over the past decade, and consulted with the Administration about how to do it better than it has been done before, and a number of changes were made with that in mind.

The subdividing of the different categories was intended to create a better record because the lack of a good record was our problem in the last round, and we were trying to get people to focus on what the evidentiary standards would have to be. So it doesn't necessarily preclude us from finding that there are multiple devices and categories that will have like treatment in the end. But the intent was to do something to improve the situation, not to make it harder.

Ms. LOFGREN. I guess I don't understand that, and perhaps you can fill in later with me. But if you take a look on page 55689, it talks about petition proposing a general exemption for all wireless devices or all tablets. It is difficult to support, in contrast with tablet computers, e-book readers. It just seems to me that from a Silicon Valley point of view, that doesn't make any sense at all to me.

Ms. PALLANTE. I could see how it wouldn't make sense from a technology perspective. We have this factor in the statute that requires us to look at actual markets, not giant markets but particular markets. So to your more general point, the 1201 rule-making is from 1998, and we are trying to fit it into—

Ms. LOFGREN. I understand that. I love Bob Kastenmeier when he wrote the Act in '76, he didn't have to deal with some of these issues. But the fact is, in terms of markets, whether I have my Kindle, whether I have my iPad with my Kindle app, whether I have my Kindle app on my phone or my Galaxy phone, it really doesn't matter.

Mr. COBLE [presiding]. The gentle lady's time has expired.

Ms. LOFGREN. Thank you, Mr. Chairman. I would like—I would hope that we could follow up with this because we are likely going to have the same ugly explosion and public outcry that we had last year on phone unlocking. It would be nice to avoid that.

Mr. COBLE. I thank the gentle lady.

This concludes today's hearing.

I want to thank the Register again for having served as our only witness today. We appreciate it very much.

I want to thank those of you in the audience. Your presence indicates that you have more than a casual interest in this matter, and I thank you all for having attended as well.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

This hearing stands adjourned.

[Whereupon, at 3:27 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY
AND THE INTERNET

Howard Coble, Chairman

Hearing Memo

Oversight of the U.S. Copyright Office

Thursday, September 18, 2014
2:00 p.m.
2141 Rayburn House Office Building

The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for Limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

United States Constitution, Article I, Section 8, Clause 8

INTRODUCTION

The Subcommittee on Courts, Intellectual Property and the Internet will conduct an oversight hearing on the U.S. Copyright Office (Office) on Thursday, September 18, 2014 at 2:00 p.m. in Room 2141 of the Rayburn House Office Building.

1. PURPOSE

This hearing will require the Register of Copyrights and Director of the Copyright Office to appear before the Subcommittee and address concerns that relate to the Office's performance (and its ability to continue to properly perform) its statutory and related responsibilities under the copyright law.¹ The hearing will focus on the Office's progress and operations and provide the Subcommittee the opportunity to begin considering strategic opportunities and challenges that relate to the need to transform the Office into a 21st Century Digital Copyright Office.

2. BACKGROUND

2.1 The U.S. Copyright Office

The Judiciary Committee is responsible for oversight of the administration and operation of the U.S. Copyright Office. The Committee exercises oversight and legislative jurisdiction over the

¹ Title 17 of the *United States Code*.

Office's administrative activities, legal authorities, programs, expenditures, resources and structure. In this regard, the Committee's ultimate goal is to ensure the Office is appropriately designed and fully equipped to properly administer the copyright laws enacted by Congress.

In 1897, Congress organized the Office as a separate department within the Library of Congress. At that time, Congress authorized the appointment of a Register of Copyrights to ensure the functions and duties of the Office were appropriately prioritized, faithfully pursued and properly administered.

In addition to overseeing the registration and recordation functions of the Office, Congress vested in the Register critical legal and policy functions that relate to copyright law and related matters. The general responsibilities and organization of the Office are delineated in Chapter 7 of title 17 and specifically described in Section 701, which follows:

17 U.S. CODE § 701 - THE COPYRIGHT OFFICE: GENERAL RESPONSIBILITIES AND ORGANIZATION

- (a) All administrative functions and duties under this title, except as otherwise specified, are the responsibility of the Register of Copyrights as director of the Copyright Office of the Library of Congress. The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, shall be appointed by the Librarian of Congress, and shall act under the Librarian's general direction and supervision.
- (b) In addition to the functions and duties set out elsewhere in this chapter, the Register of Copyrights shall perform the following functions:
 - (1) Advise Congress on national and international issues relating to copyright, other matters arising under this title, and related matters.
 - (2) Provide information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright, other matters arising under this title, and related matters.
 - (3) Participate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, other matters arising under this title, and related matters, including as a member of United States delegations as authorized by the appropriate Executive branch authority.
 - (4) Conduct studies and programs regarding copyright, other matters arising under this title, and related matters, the administration of the Copyright Office, or any function vested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations.
 - (5) Perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in this title.
- (c) The Register of Copyrights shall adopt a seal to be used on and after January 1, 1978, to authenticate all certified documents issued by the Copyright Office.
- (d) The Register of Copyrights shall make an annual report to the Librarian of Congress of the work and accomplishments of the Copyright Office during the previous fiscal year. The annual report of the Register of Copyrights shall be published separately and as a part of the annual report of the Librarian of Congress.
- (e) Except as provided by section 706 (b) and the regulations issued thereunder, all actions taken by the Register of Copyrights under this title are subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, title 5, United States Code, Chapter 5, Subchapter II and Chapter 7).
- (f) The Register of Copyrights shall be compensated at the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5. The Librarian of Congress shall establish not more than four positions for Associate Registers of Copyrights, in accordance with the recommendations of the Register of Copyrights. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights. Each Associate Register of Copyrights shall be paid at a rate not to exceed the maximum annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5.

In sum, the Office's statutory functions and duties include: domestic and international policy analysis; legislative and policy formulation support to Congress; legal expertise and litigation support; support to the judiciary and executive branch agencies (including significant efforts on trade and anti-theft initiatives); participation on U.S. delegations in meetings with foreign governments or private parties; attendance and participation at intergovernmental meetings and other international events; providing copyright education and training to officials from developing countries; responding to public inquiries; and providing information and related education to the public.

Today, the Office has approximately 360 full time employees², the majority of whom examine and register hundreds of thousands of copyright claims in books, music, movies, software, photographs, and other works of authorship each year.

The Office's registration system and the companion recordation system constitute the world's largest database of copyrighted works and copyright ownership information. The Office's primary functions are to examine and register or deny copyright claims filed by authors and other copyright owners, and to record transfers of copyright ownership and other documents pertaining to copyright. The Office is required to maintain and provide up to date records and indexes of these major functions.³

The Office also administers several compulsory licenses⁴ that manage and disperse private funds, which are, in essence, held in trust by the government. This includes funds that pertain to copyright owners' rights in programming on broadcast television signals retransmitted by cable operators and satellite carriers.

As suggested above, the Office works regularly with the Department of Justice, the Department of State, the Office of the U.S. Trade Representative, and the Department of Commerce, including the Patent and Trademark Office. By statute⁵, the Register of Copyrights is a member of the interagency intellectual property enforcement advisory committee chaired by the U.S. Intellectual Property Enforcement Coordinator (IPEC).

The Office maintains and provides records and other information about copyright law and the Office's regulations, practices, and procedures for public use. Finally, the Office provides substantial support to the Library of Congress by obtaining and making available copies of works

2 The Office has an authorized ceiling of 439 employees. This number does not include 24 employees in the Licensing Division and the Copyright Royalty Board, whose positions are supported by non-appropriated funding.

3 Section 705 of title 17.

4 Sections 111, 119 and 122 of title 17 that govern the authority to retransmit copyrighted programming by cable and satellite companies.

5 The Prioritizing Resources and Organization for Intellectual Property Act of 2008, which was a bipartisan effort of this Committee and originated in this Subcommittee, Pub. L. 110-403, tit. III, 122 Stat. 4256, 4264. 15 U.S.C. § 8111 (a), (b)(3).

for the Library's collection and library exchange programs.⁶

2.2 The Register of Copyrights and Director of the U.S. Copyright Office

The Register, Maria A. Pallante, was appointed⁷ by the Librarian of Congress, Dr. James H. Billington, on June 1, 2011 as the 12th Register in the history of the United States. In one of her first public acts in that capacity, Ms. Pallante testified before this Subcommittee where the then-Chairman and current Chairman of the Judiciary Committee publicly discussed the importance of the office of the Register providing "leadership ... at a time of great challenge and transition" for copyright law. The Chairman and the Register also discussed the significance of one of the Register's first public acts being to "continue the tradition of having the Register serve as the principal advisor to the Congress on matters of copyright policy."⁸

2.3 Scope of the Hearing and Recent Office Activity

Priorities and Special Projects of the United States Copyright Office

On October 25, 2011 - shortly after Ms. Pallante became Register, the Office published the Priorities and Special Projects of the United States Copyright Office,⁹ which identified seventeen priorities in policy and administrative practice and ten special projects for the Office. In the Executive Summary, the paper noted the importance of "promoting and disseminating American works of authorship and in sustaining large and small businesses in the information, entertainment,

⁶ Pursuant to authority in Section 704 of title 17. The estimated annual value of these additions to the Library's collection is \$30 million.

⁷ The appointment announcement is available at <http://copyright.gov/about/leadership/appoint-bio-pallante.pdf>

⁸ See printed pages 6-7 of pdf available at http://judiciary.house.gov/_files/hearings/printers/112th/112-77_66614.PDF

Mr. Goodlatte. Our first witness is Maria Pallante, the 12th appointed Register of Copyrights in the history of the United States. Perhaps I should allow that to sink in for a moment. For those of you who haven't heard the news. The Librarian of Congress, Dr. James H. Billington, formally appointed Ms. Pallante as Register in a permanent capacity today.

Ms. Pallante takes over leadership of the office at a time of great challenge and transition. Her immediate predecessor, Marybeth Peters, served as Register for 16 years and devoted more than 45 years to public service. We are pleased to share this momentous day with Ms. Pallante and honored that one of her first public acts as Register will be to continue the tradition of having the Register serve as the principal advisor to the Congress on matters of copyright policy.

...
Ms. Pallante. Thank you very much, Mr. Chairman. I am deeply honored by Dr. Billington's appointment today and it is a privilege to begin my tenure as Register by appearing before this Subcommittee. Marybeth Peters left behind a tremendous legacy, and it is my goal to continue her work and to build the premier copyright registration system for the United States and one that is the envy of the world. I also believe that the role of my office is increasingly important--perhaps more important than ever before--in policy and international affairs, and I feel very fortunate to have a talented staff and a diverse and vibrant stakeholder community to draw upon for assistance. Thank you again, Mr. Chairman, and I look forward to supporting the work of this Subcommittee.

⁹ <http://copyright.gov/docs/priorities.pdf>

and technology sectors.”

The Priorities document observed that “Congress has charged the Copyright Office with administering the Copyright Act” and that the Office must chart a course for the future that not only attracts and retains “a dedicated and highly skilled staff” but also harnesses “the considerable talents of the private sector” … by maximizing, for example, “collaborations and other entrepreneurial strategies.”

The Priorities document was intended to focus the Office’s attention over the near-term (two years)¹⁰ on matters and strategies that the Office had the ability and existing authority to address without requiring either significant investments in new resources or contemplating substantial revisions to authorizing legislation.

This oversight hearing will provide an opportunity for the Members of the Subcommittee to receive an update and assessment of the Office’s progress in implementing these near-term objectives and to begin to consider what steps are advisable to further strengthen and position the Office to achieve broader objectives in a sustainable environment.

Compendium of U.S. Copyright Office Practice

One of the Special Projects announced in October 2011 was to revise the Compendium of Copyright Office Practices. This undertaking was substantially completed on August 19, 2014 when the Office published a near final draft of its first comprehensive revision of the Compendium in three decades (the first since 1984).

The 1200-page Compendium serves as both an internal document for use by registration specialists and other copyright practitioners as well as an external document that provides up to date information for those who wish to learn more about copyright law or who interface with copyright as members of the general public or users of other’s creative works. For the first time in history, the Office will make the final version of the Compendium available for continual updating.

Study of Fees and Services

Another of the Special Projects was to commence a study of the costs of the Office and to adjust fees charged with respect to the registration of claims, recordation of documents, and other public services, pursuant to the Office’s authority under 17 U.S.C. § 708 (b).

On November 14, 2013, the Office submitted a “Proposed Schedule and Analysis of Copyright Fees to go into Effect on or About April 1, 2014.” Subsequently, in response to public comments and input, the Office adjusted certain proposed fees.

In addition to providing a forum to discuss the Office’s adjusted fee structure, this Subcommittee

¹⁰ The Office adopted a goal of implementing the Priorities and Special Projects by the end of October 2013.

hearing will present the opportunity to begin consideration of related issues,¹¹ including whether the Office's legal authority to recover its costs should be modified to take into account a fuller understanding of the true and actual costs of providing services.¹²

The Role of Information Technology in Modernizing the Office and Improving Services to Authors, Other Users of the Copyright System and the Public

The transformation of the Office from a paper-based registration and recordation system to a modern, efficient and customer-friendly electronic or digital system is essential to the proper administration of copyright law and has been one of the highest priorities of the Subcommittee and the current and former Register.

The 11th Register of Copyrights, MaryBeth Peters, oversaw the initial transition of the Office from a paper-based registration system to an electronic system in the years immediately prior to her retirement. Resource restraints and other factors led to the postponement of a digital recordation system, the adoption of which could be enormously beneficial to not only copyright registrants but also commercial enterprises and members of the public who wish to license works from creators. A sustainable and viable recordation system could also be useful in resolving substantive copyright issues including the identification of users of "orphan works" and the licensing of creative works by innovative commercial and technology companies.

Currently, the Office lacks autonomy to control or manage its own IT as its operations are intertwined¹³ with those of the Library of Congress. In addition, the Office has only 23 FTE's and a limited number of contractors to manage its technical infrastructure.

This arrangement has led to difficulties and disruptions¹⁴ that compromise the ability to deliver services to the public on a real-time 24/7 basis, which is both required in the marketplace and has been a continuing priority and objective of the Committee and Subcommittee leaders.¹⁵

11 The inability of the Office to build a reserve fund to defray unexpected costs or invest in capital improvements as well as the practice of appropriators to treat royalties paid under compulsory licenses that should be held in trust for disbursement to private copyright owners as "public" funds that they use to offset needed appropriations are long-standing matters of concern.

12 For example, the contribution of the Library's information technology (IT) systems to the Office's operations are not accounted for in the fcc schedule.

13 In addition to administrative and operational concerns, this arrangement also creates potential security concerns for consumers and customers of Office services.

14 For example, the Office's public website was taken offline for four days in October 2013. This resulted not due to any technical infirmity of the website, which is relied upon by applicants for registration and other third-party users of copyrighted works, but due to a "Library-wide" policy decision.

15 By letter of March 31, 2014, Chairman Goodlatte requested that the House Appropriations Committee Subcommittee on the Legislative Branch support "critical funding to modernize the Copyright Office's technical infrastructure in support of essential efforts to build a robust digital repository and re-engineer the document recordation function."

Policy Recommendations and Reports

Significantly, Ms. Pallante helped initiate a comprehensive congressional review of U.S. copyright law, through her Horace S. Manges Lecture *The Next Great Copyright Act*, presented at Columbia Law School, as well as subsequent testimony before the Committee in the spring of 2013. In November 2013, she delivered the Christopher Meyer Memorial Lecture at the George Washington University School of Law, entitled *The Next Generation Copyright Office: What it Means and Why it Matters*.¹⁶ Other speeches include *Review and Reflection: Copyright Hearings and Related Discourse in the Nation's Capital* (February 2014); *ASCAP at 100* (February 2014); *The Curious Case of Copyright Formalities* (April 2013) and *Orphan Works & Mass Digitization: Obstacles & Opportunities* (April 2012).

Beyond these addresses, the Office has researched and produced a number of recent reports on copyright law and policy. These include the 2011 report mandated by the 2010 satellite reauthorization law, separate reports on mass digitization and pre-72 sound recordings in 2011, a report requested by former Chairman Lamar Smith on the adjudication of small copyright claims and another requested by Subcommittee Ranking Member Nadler on a proposal to adopt a resale royalty in the United States. Forthcoming reports include one on orphan works/mass digitization, a second on the “making available” right and a third on music licensing.

3. WITNESS

- The Honorable Maria Pallante, Register of Copyrights and Director of the United States Copyright Office, Library of Congress.

4. ISSUES

- How important is a 21st Century Digital Copyright Office to the ability of Congress to accomplish its objectives in seeking to comprehensively review the copyright law?
- How are copyright registrants, users of creative works and other members of the public being negatively affected by resource and operational issues at the Office?
- What steps has the Office taken to transition from a paper-based registration and recordation system to a modern 21st Century Digital Copyright Office?
- Are there further steps in the Office’s control that it can take? Are input and direction from the Committee and Congress needed to sustain and catalyze further progress?
- Is the Office serving copyright registration applicants and other members of the public optimally?
- If the Committee agrees that the Office needs to invest more in IT in order to accomplish Congress’ priorities and to promote a sustained ability to serve authors and the public then are there structural or other organizational issues that need to be addressed?
- What are the most significant administrative and budget problems that confront the Office at this time?

¹⁶ This address is particularly relevant to the subject matter of today’s oversight hearing.

5. CONTACT

Please direct any questions regarding this hearing to David Whitney, Oversight Counsel for the Majority, at 5-5741.



UNITED STATES COPYRIGHT OFFICE

PRIORITIES AND SPECIAL PROJECTS OF THE UNITED STATES COPYRIGHT OFFICE

October 2011–October 2013

Maria A. Pallante
Register of Copyrights

October 25, 2011

EXECUTIVE SUMMARY

This paper summarizes the priorities of the United States Copyright Office over the next two years with respect to copyright policy and administrative practice, and announces a series of new projects designed to improve the quality and efficiency of its services in the twenty-first century. For the benefit of the public, the paper also describes the history, responsibilities, and funding of the Office.

One of the Office's core responsibilities is providing leadership and impartial expertise on questions of copyright law and policy. Copyright law is the engine of free expression and a major building block in the world economy. It plays a critical role in promoting and disseminating American works of authorship and in sustaining large and small businesses in the information, entertainment, and technology sectors. As copyright issues have become more ubiquitous, the Office has had to find innovative ways to assist users of copyrighted works and to provide education about core copyright principles.

Congress has charged the Copyright Office with administering the Copyright Act for well over a century. As the Office charts a course for the future, it will need to attract and retain a dedicated and highly skilled staff. At the same time, it will need to harness the considerable talents of the private sector—not only to invite fresh ideas for improving registration and other public services, but also to maximize the agency's potential through collaborations and other entrepreneurial strategies.

The seventeen priorities and ten special projects presented here reflect the commitment of the Office to address current complexities in the copyright system and to prepare for future challenges.

Comments on the paper may be sent to: registerofcopyrights@copyright.gov.

HISTORY, RESPONSIBILITIES, AND FUNDING

The Copyright Office was founded in 1870, when Congress removed copyright registration from the district courts and centralized it in the Library of Congress. Today, the Copyright Office has approximately 450 employees, the majority of whom examine and register hundreds of thousands of copyright claims in books, music, movies, software, photographs, and other works of authorship each year. In fiscal year 2011, the Office processed more than 700,000 registration claims. The Office's registration system and the companion recordation system constitute the world's largest database of copyrighted works and copyright ownership information.

The Office administers several statutory licenses that manage and disperse private monies, including those pertaining to copyright owners' rights in programming on broadcast television signals that are retransmitted by cable operators and satellite carriers.

It also provides basic copyright information services to the public in a variety of ways. Last year, the Office's Information and Records Division answered hundreds of thousands of inquiries by phone and email, performed search and retrieval functions for customers involved in research and litigation, and served a substantial number of in-person visitors.

Congress has also prescribed critical law and policy functions for the Copyright Office. *See* 17 U.S.C. § 701. These include: domestic and international policy analysis; legislative support for Congress; litigation activities; support for the courts and executive branch agencies (including significant efforts on trade and antipiracy initiatives); participation on U.S. delegations in meetings with foreign governments or private parties; attendance and participation at intergovernmental meetings and other international events; hosting copyright training for copyright officials from developing countries; and providing public information and education. The Copyright Office works regularly with the Department of Justice, the Department of State, the Office of the U.S. Trade Representative, and the Department of Commerce, including the Patent and Trademark Office. By statute, the Register of Copyrights is a member of the interagency intellectual property enforcement advisory committee chaired by the U.S. Intellectual Property Enforcement Coordinator (IPEC).

FUNDING

The Copyright Office has an overall annual operating budget of approximately \$54 million. About 65 percent of the annual budget comes from fees for services, collected by the Office on a partial cost-recovery basis. Congress determines on an annual basis what portion of this income the Office may spend or reinvest. The Copyright Office receives the remainder of its funding from federal appropriations. However, these appropriated dollars must be viewed, in part, in the context of the Office's work on behalf of the Library of Congress. In fiscal year 2010, for example, the Copyright Office managed the deposit or demand of well over 800,000 copies of creative works for the nation's collections, providing to the Library books, motion pictures, sound recordings, and other works valued at approximately \$33 million dollars, which the Library otherwise would have had to purchase. Largely through copyright deposits, the Library of Congress continues to build and preserve the record of America's creativity.

The Copyright Office revisits its schedule of fees approximately every three years, a process during which it seeks public comment before making recommendations to Congress. Determining the relationship between the cost of services and pricing is a sophisticated process that must take into account both the cost of delivering services and the goals of the national copyright system. Although copyright registration and the recordation of copyright assignments and licenses provide a significant benefit for the public record, neither is required of authors or other copyright owners by law. Moreover, while there are certain legal and evidentiary benefits for copyright owners who register

or record in a timely manner, pricing is a key factor in whether they will choose to do so—particularly for independent creators. Currently, the fee is \$35 for a basic application submitted online. For an application submitted using a paper form, the fee is \$65. Group registration fees vary. See 37 C.F.R. § 201.3(c).

Increasing participation in the national registration and recordation systems is an important national objective. Ultimately, the public database of copyright ownership serves users of copyrighted materials as much as it serves copyright owners. A robust public record of copyright ownership and copyright status is essential to facilitating marketplace transactions (and the corresponding dissemination of works), and encouraging development of innovative business models that rely on the protection (or the expiration of protection) of copyrighted works. To date, all catalog records from 1978 to the present are accessible online and searchable in a variety of ways. The Office is also digitizing 70 million historic records dating from its inception in 1870 through 1977, many of which pertain to works still protected by copyright law in the United States and abroad.

ELECTRONIC REGISTRATION

In 2007, former Register of Copyrights Marybeth Peters initiated a multi-year reengineering effort that included converting the paper-based copyright registration system of the past century to a digital system. In building and launching the new system, the Copyright Office experienced an immediate backlog of claims that was not unexpected given the resulting major work process changes, temporary staff relocations, system testing and servicing, and widespread workforce training. The backlog peaked in 2009, but with support from the Library, was eliminated so that in recent months the Office has returned to a normal queue of open claims—an achievement that speaks to the dedication of our employees in the registration program.

Today, more than 80 percent of registration claims come to the Copyright Office electronically. The Office generally issues registration certificates in two to four months in such cases. Most paper claims take seven to ten months, in part because the Office must convert them to electronic form before proceeding with cataloging and examination. The Office frequently discusses with stakeholders, and will continue to explore, the question of what constitutes a reasonable processing time for registration claims. However, because the electronic filing system allows for hybrid submissions (where the application and fee, submitted on-line, are followed up by a hard-copy deposit mailed or hand-delivered separately), and because some claims require the Office to further correspond with the applicant, the Office will always have categories of work that take longer to process. These claims are an anticipated and routine part of the Office's business operations.

Ensuring the accuracy and integrity of the public records in its care is an especially critical function of the Copyright Office, and one that weighs heavily in the evaluation

of what constitutes the optimal turn-around time for customers awaiting registration certificates. Copyright owners, users, and courts throughout the world rely upon the information in these records. Moreover, the Office is also aware that public registration is of growing interest in the global copyright world. In recent months, the Office has hosted several foreign governments interested in studying the U.S. copyright registration system and delivered presentations to international audiences at the request of the World Intellectual Property Organization.

P R I O R I T I E S I N C O P Y R I G H T P O L I C Y

The Copyright Office has substantial responsibilities in domestic and international policy. The Register often testifies before Congressional committees on copyright policy questions, and attorneys in both the Office of the General Counsel and the Office of the Associate Register for Policy and International Affairs produce comprehensive legal analyses and studies for the benefit of Congress and the general public. The Office works closely with Congressional offices on copyright legislation and related developments, and coordinates with a wide diversity of stakeholders on such issues. Enforcement and antipiracy efforts of the United States are an important focus for the Copyright Office. It also has a long history in the drafting and updating of exceptions and limitations to copyright law for the benefit of the public.

Lawyers in the Office's Policy and International Affairs group are also experts in foreign copyright law and the copyright treaty obligations of the United States. They serve on U.S. government delegations for bilateral and regional trade and copyright treaty negotiations between the United States and important trading and copyright treaty partners. Lawyers in the General Counsel's Office have expertise in the statutory licenses and in copyright registration and recordation practices. They also regularly assist the Department of Justice in significant litigation involving copyright law and policy. In all of its work, the Office builds upon the fundamental principles of copyright law that have been set forth by Congress and upheld by the courts for more than 200 years.

The Office's policy priorities for the next 24 months are as follows, subject to new developments in the United States and abroad.

STUDIES

SMALL CLAIMS SOLUTIONS FOR COPYRIGHT OWNERS

Copyright law affords a bundle of exclusive rights to authors, including the rights to reproduce, distribute, publicly display, and publicly perform their creative works, or license others to do so. However, these rights are meaningless if they cannot be enforced. As the ease of infringement has risen, so too has the cost of federal litigation. At the request of Congress, the Copyright Office is conducting a study regarding alternative means of resolving copyright infringement claims when such claims are likely to involve limited amounts of monetary relief. Initial public comments are due January 16, 2012. Anticipated publication date: October 2013. www.copyright.gov/docs/smallclaims

LEGAL TREATMENT OF PRE-1972 SOUND RECORDINGS

U.S. sound recordings created before February 15, 1972 are not currently covered by federal copyright law. The Copyright Office is conducting a study at the request of Congress on pertinent issues, including the advantages and disadvantages of providing federal coverage, how such coverage might be enacted, the relationship of current law or proposed changes to the preservation or public access to pre-1972 sound recordings, and the financial or other impact any changes in law would have on affected rights holders. The study will also explore possible means for accomplishing such coverage. Publication date: December 2011. www.copyright.gov/docs/sound

MASS BOOK DIGITIZATION

The Copyright Office has undertaken a preliminary analysis identifying the issues related to mass book digitization—developments the Office analyzed in connection with the U.S. Statements of Interest filed in the Google Book Search litigation, as well as in testimony on the subject provided by former Register Marybeth Peters in the House of Representatives. The analysis addresses the current landscape and marketplace; possible methods to facilitate digitization projects, including voluntary, extended, and statutory collective licensing; and the implications for prior studies and proposals to address orphan works (www.copyright.gov/orphan) and section 108 library and archive exceptions in the digital age (www.section108.gov). The Office will use the analysis as the basis for future research and policy discussions in the United States. Publication date: October 2011. www.copyright.gov/docs/massdigitization

*LEGISLATIVE WORK***ROGUE WEBSITES**

Congress is exploring ways to provide more effective legal tools to address online infringement of U.S. books, films, music, and software, including infringement that originates overseas. So-called rogue websites are a particularly egregious problem. Typically, these websites make money either by directly selling pirated copies to the public, often accepting payment by means of major credit cards, or by selling advertising on the sites. Potential legislative solutions would make it possible for the United States Attorney General (and possibly copyright owners) to obtain various court orders including: injunctions ordering operators of the sites to cease their infringing activity; orders to credit card companies and Internet advertising agencies to cease providing services to the websites; and orders requiring domain name server operators and search engines to cease directing end users to websites. In March 2011, the Register of Copyrights testified about the problem before the House Judiciary Committee, recommending that Congress design legislation to "follow the money," while also considering the role of all players in the website ecosystem (www.copyright.gov/docs/regstato31411.html). The Copyright Office will continue to provide analysis and support to Congress on this important issue.

ILLEGAL STREAMING

In 1997 and 2004, Congress updated the criminal remedies for copyright infringement to take into account the increasing harm from evolving forms of infringement on the Internet. The focus of those amendments, however, was on the unlawful distribution of "copies" (addressing the rights of reproduction and distribution). Since that time, streaming (which primarily implicates the exclusive right of public performance) has become a major form of dissemination for copyrighted work and illegal streaming has become a more serious threat to copyright owners and legitimate U.S. businesses. Streaming legislation has been introduced in the Senate; the House is expected to address the issue in a comprehensive intellectual property enforcement bill to be introduced in October 2011. The Register of Copyrights testified on the issue before the House Judiciary Committee in June 2011, highlighting the importance of streaming in the legitimate marketplace and calling for an increase in criminal penalties for egregious cases (www.copyright.gov/docs/regstato60011.html). The Copyright Office will continue to support Congress on this high-priority issue.

PUBLIC PERFORMANCE RIGHT IN SOUND RECORDINGS

For decades, the Copyright Office has supported the extension of the public performance right in sound recordings, the absence of which is unique to the United States vis-à-vis other nations with established copyright laws (www.copyright.gov/docs/regstato70509.html). Legislation was introduced in both the 110th and 111th Congresses, but there were

strenuous objections from traditional broadcasters. When sound recordings first became the subject matter of federal copyright law effective February 15, 1972, copyright owners of sound recordings were granted the exclusive rights of distribution and reproduction, but not public performance. In 1995, a limited right to perform a sound recording publicly by means of a digital audio transmission was added, but traditional broadcasters remain free to transmit public performances of sound recordings over the air without the permission of the copyright owners and without making any royalty payments. In addition to the obvious disparity for the performers and producers of these sound recordings, there is an economic disadvantage between the businesses that offer sound recordings over the Internet as compared to those that offer them over the air (the former are required to pay performance royalties while the latter are not). Finding a way to reconcile these differences has been a long-standing goal of Congress and the Copyright Office, and the Office will continue to provide analysis and support on this important issue.

ORPHAN WORKS

One issue that has been very widely discussed in recent years is how to create a legal framework to facilitate the authorized use of so-called "orphan works." Orphan works are defined, in this context, as works for which authors cannot be identified and located by prospective users in situations that would otherwise require permission and licenses. In 2006, the Copyright Office delivered a major study to Congress on this issue: *Report on Orphan Works* (www.copyright.gov/orphan). The Office agreed with many in the copyright community that millions of works that could be available to the public (e.g., for research, education, or use in mainstream books or documentary films), are barred from use because of the inability to find rightsholders. The Office proposed limiting the remedies a copyright owner might obtain against one who has failed to identify or locate the copyright owner after conducting a reasonable, diligent search (details of which were later defined in draft legislation to incorporate best practices and technological tools). The House and Senate worked extensively on orphan works legislation in the 109th and 110th Congresses. The topic then stalled after the parties to litigation involving the Google Book Search program announced a proposed settlement agreement in part because it had implications for orphan books. However, in 2011 the court rejected an amended version of the settlement, expressly ruling that the disposition of orphan works belongs with Congress, not the courts. See *Authors Guild v. Google Inc.*, 770 F. Supp. 2d 666, 677–78 (S.D.N.Y. 2011). Foreign countries, including members of the European Union, are also renewing their focus on the orphan works problem. The Copyright Office will continue to provide analysis and support to Congress on this important issue.

C O P Y R I G H T E X C E P T I O N S F O R L I B R A R I E S

In 2008, the Copyright Office received the Section 108 Report (www.section108.gov) which details concerns with the current copyright exceptions for libraries and archives (and discusses expanding the section 108 exceptions to museums). The independent study group included a mix of copyright owners and copyright users; its work was cosponsored by the Librarian of Congress and the Register of Copyrights. In sum, the 2008 report concluded that section 108 fails to meet the needs of libraries and archives (and other entities, such as museums) dealing with born-digital works, digital preservation and conversion issues, as well as numerous types of uses and lending of works by patrons of these institutions. Because some of the issues were implicated in the Google Book Search litigation (including issues related to providing access to copyrighted works), some stakeholders were wary of proceeding too quickly with legislative discussions. However, because many of the issues are critical for libraries, in 2012 the Office will formulate a discussion document and preliminary recommendations on these issues.

M A R K E T - B A S E D L I C E N S I N G F O R C A B L E A N D S A T E L L I T E R E T R A N S M I S S I O N

Several provisions of the Copyright Act, Title 17 of the U.S. Code, set forth compulsory terms and conditions for the retransmission of distant and local broadcast television signals by cable operators and satellite carriers. Compulsory licenses are, under any copyright system, an exception to the otherwise exclusive rights of copyright owners. In U.S. law, the cable and satellite retransmission compulsory licenses in sections 111, 119, and 122 were created at the dawn of commercial cable systems (in the 1970s), and satellite systems (in the 1980s) to allow nascent industries to flourish. At the request of Congress, the Copyright Office just completed a study analyzing possible market mechanisms and licensing models, and providing a time frame under which Congress might phase out these statutory provisions. Congress requested additional studies from the Federal Communications Commission and the Government Accountability Office, on "must carry" rules and other issues of communications policy. The Office's report was published on August 29, 2011. The Office will continue to work with Congress as it considers the phase out and the possible transition to market models. www.copyright.gov/docs/section102

T R A D E A N D F O R E I G N R E L A T I O N S**W O R L D I N T E L L E C T U R A L P R O P E R T Y O R G A N I Z A T I O N (W I P O)**

The Register of Copyrights and other senior leaders in the Office regularly participate in conferences and symposia sponsored by the World Intellectual Property Organization in Geneva and in other WIPO-sponsored meetings throughout the world. The Copyright Office and WIPO also cosponsor training programs for private sector and government

officials from developing countries, as well as from other countries that are revisiting their copyright laws or enforcement regimes.

Copyright Office experts routinely work with other U.S. government agencies to represent the United States in meetings on copyright and related subjects at WIPO. Currently, the WIPO Standing Committee on Copyright and Related Rights (SCCR) is considering: (1) text for a proposed treaty to further protect audiovisual performers (which will be discussed at a Diplomatic Conference in summer 2012); (2) possible international instruments for the dissemination of materials (within countries and across borders) for blind, visually impaired, and print disabled persons, and (3) possible international instruments pertaining to the protection of broadcast signals.

The Office is also working with other Library of Congress staff and with U.S. publishers on U.S. participation in the Trusted Intermediary Global Accessible Resources Project (TIGAR), a voluntary pilot project involving cross-border licensing of accessible works for visually impaired persons. In addition, the Office is participating in Intergovernmental Committee deliberations on the possible international recognition of and protection for traditional cultural expressions, as well as other copyright projects approved by the Committee on Development and Intellectual Property.

TRANS-PACIFIC PARTNERSHIP AND OTHER TRADE PRIORITIES

Legal and policy experts at the Copyright Office continue to support the Office of the United States Trade Representative and other executive branch agencies by providing substantive copyright analysis to U.S. negotiators in multilateral trade and treaty deliberations. They also serve on official delegations and negotiating teams. Current trade priorities include: the negotiations for the proposed Trans-Pacific Partnership; the implementation of existing and pending Free Trade Agreements (including those recently approved by Congress with South Korea, Colombia, and Panama); the annual "Special 301" process; various bilateral trade initiatives; and other points of intellectual property rights (IPR) engagement in bilateral or multilateral contexts. There are numerous other fora in which copyright and trade interests intersect and in which the Copyright Office participates, including the Joint Commission on Commerce and Trade with China, the Asia-Pacific Economic Cooperation forum, and ongoing IPR dialogues with nations and regional groups.

The Copyright Office has throughout its history provided expertise and impartial review and analysis of foreign copyright laws and, more recently, on copyright enforcement matters (in both the hard goods and online environments). The Office undertakes reviews of existing and proposed new copyright laws and amendments in a variety of ways, including ongoing bilateral contacts and multilateral activities, such as World Trade Organization accessions and trade policy reviews. Requests for the Office's

legal reviews are also frequently initiated by Congressional offices, by colleagues in other U.S. agencies, or by the foreign governments themselves.

PRIORITIES IN ADMINISTRATIVE LAW PRACTICE

The Copyright Office carries out an administrative law practice consistent with the technical and substantive authority Congress has granted it under the Copyright Act and other provisions of Title 17. The Register of Copyrights is charged with conducting rulemakings, implementing regulations, and publishing practices relating to the registration of copyrights, the recordation of copyright documents, and the administration of certain statutory licenses. The Office's work in this area has grown over the years in order to keep pace with legal developments and technological changes.

The Office's current administrative priorities for the next 24 months are as follows. Ongoing developments and some of the Office's special projects may yield additional regulatory work.

PROHIBITION ON CIRCUMVENTION OF MEASURES CONTROLLING ACCESS TO COPYRIGHTED WORKS

The Copyright Office has commenced its fifth triennial rulemaking (the initial rulemaking occurring in 1998) in accordance with provisions of the Digital Millennium Copyright Act (DMCA) found in section 1201(a)(1) of Title 17, which provide that the Librarian of Congress, upon the recommendation of the Register of Copyrights, may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works when the circumvention is undertaken for certain noninfringing uses. Initial public comments on the current (de novo) rulemaking process are due December 1, 2011. Reply comments will be due in February 2012 and hearings will be conducted in the spring of 2012. www.copyright.gov/1201

ELECTRONIC SYSTEM FOR THE DESIGNATION OF AGENTS UNDER THE DMCA

The Copyright Office has commenced a rulemaking to amend its regulations and practices governing the designation by online service providers of agents to receive notifications of claimed copyright infringement as provided in section 512 of the Copyright Act. The Office intends to implement a revised electronic process for this service. This process will update the directory of designated agents and expedite the process for filing and maintaining the accuracy of designated agent information in the directory. Initial public comments are due November 28, 2011 and reply comments are due December 27, 2011. www.copyright.gov/onlinesp/NPR

REVIEW OF GROUP REGISTRATION OPTIONS

The Copyright Office is examining registration accommodations for groups of related works, including, for example, photographs or unpublished collections, both with respect to the revision of existing options and the development of new group registration options. The market transition from the distribution of discrete tangible copies to online access and dissemination models raises important questions about the extent to which the Office should accommodate aggregated claims, recurring updates to compilations, the fees necessary to process and examine group claims, and the ways in which the Office can create a meaningful public record of group claims. Areas of focus include automated databases and electronic serials. These group registration projects are closely related to the issues of websites, blogs, and other means of publication online, discussed below. The Office expects to announce various group registration proposals in the first half of 2012.

REGISTRATION OPTIONS FOR WEBSITES AND OTHER FORMS OF DIGITAL AUTHORSHIP

Registration of content that is disseminated online, e.g., on websites and blogs, presents certain challenges to the copyright registration system. The Copyright Office has considered these challenges as the online environment has evolved. When a website contains a great number of contributions from many authors, and changes daily or even several times a day, what is the appropriate unit of registration? How can an accurate, informative record of copyright ownership be created? What is the appropriate deposit? Should a group registration scheme be implemented that would permit a single registration to cover content disseminated over a period of many days or weeks? The Office intends to engage in consultations with stakeholders and seek public comment on possible solutions and decisions in 2012.

ELECTRONIC ADMINISTRATION OF THE STATUTORY LICENSES

The Copyright Act requires cable operators and satellite carriers to file statements of account with the Copyright Office as a condition for use of the statutory licenses that allow for the retransmission of distant and local television broadcast signals. In 2010, the Copyright Office commenced a reengineering project to streamline the filing, processing, searching, and archiving of statements of account as a means to make these documents more quickly accessible to the public via a web portal. A pilot program to accept electronic filings from cable operators will begin in 2012. Another pilot project to test a new system to accept electronically filed notices of intention to obtain a compulsory license for making and distributing phonorecords is expected to begin before the end of 2011. The Office also intends to update its regulations for use of the statutory licenses that allow for the retransmission of distant and local broadcast television signals to account for the differences associated with the use of digital technology in providing these signals, as well

as its regulations governing statements of account for the section 115 compulsory license. Proposals will be published in 2012.

RECORDING NOTICES OF TERMINATION OF COPYRIGHT TRANSFERS

Section 203 of the Copyright Act provides authors (and some heirs, beneficiaries, and representatives specified by statute) the right to terminate certain grants of transfers or licenses “executed … on or after January 1, 1978” (the effective date of the Copyright Act of 1976). Early in 2011, the Copyright Office amended its regulations to make clear that it will record notices of termination of so-called “Gap Grants,” where the agreement to make the grant was made prior to 1978 but the work was not actually created until after 1977. The amendment left it to the courts to determine the validity of such notices of termination. Some commenters suggested that the Office should explore additional measures that would provide parties with guidance in determining when a Gap Grant was “executed” under the law, following the Office’s own analysis and conclusion that these grants are likely terminable under section 203. The Office intends to seek public comment on such measures during 2012. www.copyright.gov/docs/termination

SPECIAL PROJECTS

To improve quality and efficiency of its services in the twenty-first century, the Copyright Office is pleased to announce a series of special projects for the next two years, some of which commenced this month.

STUDY OF FEES AND SERVICES

On October 1, 2011, the Copyright Office commenced a study of the costs it incurs and the fees it charges with respect to the registration of claims, recordation of documents, and other public services, pursuant to its authority under 17 U.S.C. § 708(b). The study will offer opportunities for public comment on a number of topics, including fees for expedited services and fee structures that accommodate large and small claimants. Fees for services of the Copyright Office relating to registration and recordation are currently (and historically have been) designed to recover reasonable costs. Copyright Office services benefit many constituencies in the copyright community, including, in particular, the general public and other users of copyrighted works. The roles of all these constituencies (and their needs in both commercial and noncommercial contexts) must be considered when setting fees in the future. Publication date: April 2012.

REVISION OF THE COMPENDIUM OF COPYRIGHT OFFICE PRACTICES

On October 1, 2011, the Office commenced a major revision of its Compendium of Copyright Office Practices (published in 1984 and amended in part in 1988 and 1998). The Compendium is the primary internal guidebook followed by Copyright Office registration specialists and is the recognized authority consulted by copyright owners, legal practitioners, and the courts. This project will include updating examination and recordation practices and corresponding regulations for purposes of consistency, as well as developing certain new practices for the registration and deposit of works of digital authorship consistent with Office regulations and case law. The revision process will include opportunities for stakeholder review and input throughout the process. The revised Compendium will also include practices relating to the Office's Licensing Division. Anticipated publication date: October 2013. www.copyright.gov/compendium

TECHNICAL UPDATES TO ELECTRONIC REGISTRATION

Starting in November 2011, Copyright Office staff from across divisions will engage in a series of targeted meetings with business and information technology experts in the copyright industries to discuss enhancements and improvements to the Office's electronic registration and recordation services. The Office will also look to the technology sector and consumer groups for guidance to improve the nature, accuracy, and searchability of the Office's public databases.

In these discussions, the Copyright Office will explore a wide range of questions. For example, what kind of interface is optimal for applicants who apply for registration through a portal on the Copyright Office website? What kind of information should be captured on the application and made searchable? What are the repository standards for acquiring and migrating electronic copyright deposits? How long should the Office retain deposits and under what practices and cost structure? What security measures are necessary? What kind of metadata capture, OCR, and crowdsourcing should the Office pursue?

The Office will also explore the feasibility of connecting the Office's database of registration and recordation records to private sector data, to facilitate the further licensing and use of copyrighted materials. Meetings will be held for an 18-month period starting in November 2011 and will inform the Register's strategic plan for upgrades and improvements to the electronic registration and recordation systems.

DIALOGUES AND ROUNDTABLES WITH COPYRIGHT COMMUNITY

The Register of Copyrights, along with members of the Office's legal staff, will meet regularly with participants in the marketplace (including, for example, individual creators of all types of works, publishers, producers of audiovisual works and sound recordings, Internet service providers, distributors and aggregators, educators, libraries, archives, museums, and end-users, such as consumers and bar associations). The purpose of these

meetings is to discuss developments in business and technology and the role of copyright law in facilitating the creation and dissemination of creative works. Specific topics will include investment strategies, evolving business models, licensing options, and other industry practices. These sessions will help inform the Register and her staff as they continue to set the future direction and priorities of the Office. Meetings will begin in November 2011.

RESEARCH PARTNERSHIPS WITH ACADEMIC COMMUNITY

In recognition of the importance of scholarly research, the Copyright Office will develop opportunities for law schools and universities interested in collaborating with the Office on research projects, subject to the highest standards of scholarship. This work will build upon fundamental principles of copyright law and include emerging issues. A core objective is to publish joint scholarly papers on copyright topics of national and international importance that will be helpful to the work and mission of the Copyright Office and Congress. Additionally, the Office will explore fellowships or other scholar-in-residence programs to produce scholarly research on matters of copyright law and policy. These partnership opportunities (and the topics of interest) will be announced publicly and will be awarded using a standard government selection process. The Office will begin seeking proposals in 2012.

REVISION OF COPYRIGHT OFFICE WEBSITE

The Copyright Office is undertaking a major revision of its public website, www.copyright.gov, with support from the Library of Congress. The new web site will feature better organization and navigation tools, and will allow users to pinpoint the information and resources that are most relevant to them, based on the purpose of their visit and their relative level of experience with the Copyright Office and copyright law. The site will also offer multimedia resources and more streamlined registration and recordation portals. Development work for the website will be a priority during calendar year 2012 and will include opportunities for public comment.

PUBLIC OUTREACH AND COPYRIGHT EDUCATION

The rise of digital communication and entertainment platforms means that many more people—including new kinds of authors and other creators, publishers, producers, aggregators, other users of copyrighted materials, and consumers—need assistance in understanding and navigating the law. The Copyright Office staffs a public hotline on copyright and experts on the staff speak frequently at symposia and workshops in the United States and abroad. However, the Office will need to both prioritize resources for public education and find innovative ways to reach the audiences who want help understanding general legal principles as well as registration practices. The Office is in the

process of building a business plan for copyright education, including opportunities for on-site exhibitions, events and collaborations, with the goal of implementing a series of new education projects during 2012 and 2013.

BUSINESS PROCESS REENGINEERING OF RECORDATION DIVISION

Authors, heirs, and other copyright owners submit a variety of documents to the Copyright Office for public recordation, including copyright assignments, licenses, and other records relating to chain of title. The Copyright Office's recordation division was not part of the reengineering effort implemented in August 2007. Thus, the first goal will be to obtain the information needed to create a plan for the future. In this work, the Office will consult with all relevant stakeholders, including technology and business experts. It will consider, among other issues, standards and expectations of users with respect to searchability, possible ways by which submitters could redact or update their public information, and the feasibility of connecting to privately held records and databases.

In determining the best course of development for the recordation program, the Copyright Office will engage in discussions with copyright owners for all types of works, as well as with all types of users of the public copyright records for research, licensing, and other purposes (commercial and noncommercial). The Office hopes to draw on the diverse experience of stakeholders, including technologists, librarians, practitioners, educators, consumer groups, authors, authors' heirs, and copyright industry groups. Meetings will take place during an 18-month period starting in November 2011 and will inform the Register's strategic plan for this important public service.

PUBLIC ACCESS TO HISTORICAL RECORDS

A major challenge for the Office is how to make historical copyright records searchable and available online. These records (some 70 million in total) date from 1870 through 1977 and are indexed in multiple formats, such as bound volumes of original applications, card catalogs, published indexes, and hand-written entries. Many of these records are still relevant in determining the copyright status of many works. Working with the other parts of the Library of Congress, interested partners, and contractors, the Copyright Office is in the midst of a multiyear effort to digitize the entire inventory.

How best to make records available to the public is a complex challenge. In order to maximize solutions, the Copyright Office will undertake a broad public discussion among interested parties. Among other strategies, the Office will consider crowdsourcing as a possible option regarding optical character recognition of diverse (and often hand-written) materials and other questions related to metadata capture and indexing. The Copyright Office will also engage experts through a specialized project blog beginning in November 2011. www.copyright.gov/digitization

SKILLS TRAINING FOR COPYRIGHT OFFICE STAFF

To fulfill its mission, the Copyright Office must be able to attract, develop, and retain a highly skilled staff. On October 1, 2011, the Office launched an internal work life project to begin to address important issues that relate to ensuring a dynamic and effective work force. Among other tasks, the project will address critical skills training and educational opportunities that are essential to furnishing public services, including for example, copyright legal curricula for Office staff, and current developments in the areas of business and technology. 



Statement of Chairman Bob Goodlatte
Subcommittee on Courts, Intellectual Property and the Internet
“Oversight of the U.S. Copyright Office”
Thursday, September 18, 2014

For the past year and a half, the Judiciary Committee has engaged in a comprehensive review of copyright law. It has been nearly four decades since we last completed this complex and important task. Nevertheless, the copyright law has grown and been significantly amended over that time.

From 1991 to 2011, the Copyright Law of the United States, in fact, expanded from 126 to 351 pages. The law grew because Congress enacted new and often increasingly sophisticated laws in response to new forms of authorship, distribution and/or infringement.

Of course, more people are aware of the importance and relevance of copyright law in their lives today than at any time in the past. They are also more likely to petition Congress to protect their rights or to seek an exception or limitation in the law. Whatever the concern, the Copyright Office is required to administer the law as Congress wrote it.

A key focus of our goal in comprehensively reviewing the substantive copyright law is to modernize it and adapt it to reflect changes in the manner in which works are created by authors, made available by third parties and enjoyed by the public in the digital age.

Concomitant with this commitment to ensure the law is substantively adapted to the 21st century is a complementary obligation to ensure that the Office itself is positioned to perform its vital administrative, legal and policy functions as we transition and transform it into a **21st Century Digital Copyright Office**.

The Office has been extraordinarily busy during Ms. Pallante's tenure as Register. She assumed responsibility for its administration at a momentous time. The Register has been transparent about what she considers to be limitations on the Office's ability to modernize its operations further without addressing longstanding concerns.

And the Register is not alone in her assessment that new resources and support are urgently required. Members of this Committee have heard similar concerns expressed by individuals and companies that rely upon the Office to protect the exclusive rights the Constitution recognizes as necessary for the promotion of science and useful arts and to facilitate commercial transactions in the marketplace.

America's copyright system represents a competitive advantage for our country and serves as a catalyst for investment, free expression and economic growth. It encourages individual creativity and inures to the benefit of all Americans and citizens the world over when it works well. But its full benefits cannot be realized if the law is archaic or unenforceable or the office charged with administering it is not appropriately resourced and supported.

Central to the future effectiveness of both the law and the Office are modern, customer-focused registration and recordation systems that are adapted to the digital age. As Public Knowledge noted recently, "If the copyright registry – in many ways the heart of the copyright system - cannot keep up with the pace of innovation, both creators and the public will be disserved."

And with respect to the recordation system that holds such great potential to improve incentives for both creativity and innovation by facilitating licensing transactions between copyright owners and startup companies, we can only build a sustainable system if we ensure the Office has sufficient resources and a modern IT

infrastructure that is designed for and devoted to the unique purposes and obligations of our copyright system. This Committee has and will continue to actively support critical funding to modernize this central function of the Office.

Today's hearing is important because it draws attention to matters that need to be addressed properly and urgently. I look forward to receiving Ms. Pallante's testimony and know this Committee will be devoting an increasing amount of time and public attention to our joint efforts to strengthen and modernize the Office's operations.

Before concluding, Mr. Chairman, I want to draw public attention to another timely matter. This summer, Congress enacted legislation to address cellphone unlocking. The Office recently announced that its next triennial rulemaking will begin soon. The law requires the Office to have a complete record to base decisions on any proposed rulemaking. This means any exemption for cellphones or tablets needs to be reviewed *de novo* and based on the evidence submitted by interested parties during the current rulemaking. It is therefore important for all interested parties to take advantage of the legal process and I encourage anyone concerned to fully participate in the next rulemaking.

With that, Mr. Chairman, I conclude my remarks.

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U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Courts, Intellectual Property, and the Internet

Statement of

Mary Rasenberger
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In Response to

Hearing: Oversight of the U.S. Copyright Office
September 18, 2014, 2:00 p.m.

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY AND THE INTERNET

Statement of Mary Rasenberger on Behalf of the Authors Guild
In Response to the September 18, 2014 Hearing on Oversight of the U.S. Copyright Office

The Authors Guild submits this statement in response to the recent Hearing on Oversight of the U.S. Copyright Office. The Guild and its predecessor organization, the Authors League of America, have been leading advocates for authors' copyright and contractual interests since the League's founding in 1912. We have a 100-year history of contributing to debates before Congress on the proper scope and function of copyright law.

The Copyright Office has been providing important, effective services with the resources it has, but its infrastructure, funding and status within the U.S. government are relics of the analog era. The digital disruption that has swept through the copyright system in recent years requires a reevaluation of the Office's resources and authority, as the Subcommittee has recognized.

The Copyright Office can no longer be treated as a sleepy bureau in the corner of the Library of Congress; copyright and the industries that depend on it represent an increasingly central part of our economy and culture. The political status and funding of the Copyright Office must reflect this reality if the Office is to best serve its stakeholders, which include nearly every U.S. citizen.

We submit this statement to support the testimony of the Register of Copyrights and Director of the United States Copyright Office, Maria Pallante, before the Subcommittee on September 18, 2014. We note that the needs of the Copyright Office fall into three general categories: (i) infrastructure improvement, (ii) securing the funds for that improvement, and (iii) obtaining independent agency status. As a society of authors whose livelihoods are secured by copyright and copyright only, it is in our best interest—as it is in the best interest of the creative community at large—that Congress act swiftly on these fronts to guarantee the Copyright Office's relevance and effectiveness in the years to come.

We are grateful to the Subcommittee for acknowledging the need to reexamine the position of the Copyright Office and for taking into consideration the perspective of the Authors Guild, this nation's largest and oldest society of professional authors.

1. Infrastructure

The infrastructure of the Copyright Office has not kept pace with the times; it must be updated to serve the dynamic and sophisticated business models and needs of those who rely on it, both copyright owners and users—namely, the general public. This will entail the modernization of the registration and recordation systems, a staff that in quantity and expertise can execute the amount and complexity of work the Copyright Office performs on behalf of its stakeholders, and the independence and improvement of the Office's IT resources.

a. Registration, Recordation—and Integration

It is widely acknowledged that the registration system must be updated to catch up with copyright-industry developments that have fundamentally transformed the way many works are delivered and received. The statutory provisions governing registration and deposit are a product of their time—a time when most copyrighted works were embodied in physical objects that were owned by their users. A registration and recordation system that is still largely paper-based simply cannot meet the needs of today's authors and businesses. The digital revolution's increase in the speed of commerce and in modes of distribution has ushered in a new normal: business is done more quickly and more efficiently—and Copyright Office customers expect as much.

A more robust and complete public copyright record is valuable for its own sake. But it would have added benefits. A completely reliable record system would increase commerce by removing uncertainty from corporate legal departments seeking to license works for downstream use. It would also substantially mitigate the problem of orphan works—copyright-protected works whose owners can't be tracked down—simply by minimizing the number of rightsholders who can't be found.

Further, “best edition” regulations must be updated to permit the deposit of electronic copies. The Copyright Office launched an electronic registration system in 2008, but to this day not all applications can be filed electronically. Many group registrations and other non-standard types of registration must still be filed on paper applications. Best edition deposit regulations require hard

copies of most published works to be deposited even when registered electronically—this includes purely digital works that are both created and distributed electronically. This causes great inconvenience and inefficiencies for registrants and for the Office.

If the Library of Congress' needs for its collections cannot be served by electronic copies, Congress should consider separating the mandatory deposit provisions of the Copyright Act (Section 407)—which require the deposit of published works with the Copyright Office for the Library's collections and use—from the deposits required for registration purposes (Section 408), as the two types of deposits serve very different needs. The latter are used by the Copyright Office for examination purposes and by owners and litigants for evidentiary purposes. The mandatory deposit copies, on the other hand, are intended to build the collections of the national library. In a paper-based world, the same copy easily served both purposes. As Register Pallante testified, that is no longer the case.

It is particularly important to authors and individual rightsholders generally that copyright documentation be processed more quickly and retrieved more easily. Moreover, it is essential that the information retrieved be more thorough and be accurate and reliable. Copyright holders and users alike will benefit from an authoritative, dependable, secure and *integrated* database containing all copyright information relating to a given work—both registration and recordation information—that is, much like the USPTO's Trademark Electronic Search System.

Currently, the registration and recordation databases are not integrated. Registration documents may show the copyright's original registrant and perhaps a renewal interest. But in many cases a registration document alone presents an incomplete chain of title that can be determined only by consulting recordation documents for licensing information, security interests and other transfers of interest in the copyright. Even where the correct information was recorded with the Copyright Office, it will appear in a separate record, one that may not even contain the registration number, so there is no certain way to link the record with the registration. This is an impediment to businesses seeking to sell, buy or collateralize copyrights, as well as to users seeking permissions from current owners or trying to determine copyright status. The Copyright Office should have a fully integrated system like the USPTO's. A trademark search, for instance, will return all recorded information relating to a particular mark.

Where the registration database has an electronic interface based on a paper system, the recordation system is still wholly paper-based, requiring manual intake and data entry and putting an unnecessary burden on the existing Copyright Office staff. Currently, it takes an average of 17 months (and often longer) to examine and record documents containing essential information pertaining to transfers of interest. This can have serious business ramifications for authors and other copyright holders, such as delaying sales or distribution agreements in cases where a clean chain of title cannot be timely established.

The improvement and integration of the registration and recordation systems will obviously entail upgraded and independent IT capabilities—which this statement will address later—but a simpler issue to resolve is the understaffing of the registration and recordation programs. As Register Pallante described in her testimony, the Copyright Office's authorized ceiling of 439 full time employees (FTEs) was reduced by approximately 100 FTEs in recent years, and of the remaining positions, almost 80 are vacant due to budget constraints. Of 180 positions in the registration division, 48 are vacant. Meanwhile, the recordation division, which receives annually about 12,000 new paper documents, has only nine employees. That recipe yields the average 17-month processing time. The 2013 budget sequestration severely affected the Copyright Office's ability to hire and maintain a staff concomitant to its workload. If sequestration resumes in 2016, in the absence of Congressional action we're bound to see more of the same.

b. Digital Deposits and Digital Risks

Currently, the Copyright Office uses the Library of Congress' IT systems and services, which were built to serve different users with different needs. The Copyright Office needs its own, independent server for registration purposes. Of particular concern to authors and other copyright holders is the security of digital deposits of copyrighted works. In the analog era, it was fitting that the Copyright Office was housed in the Library of Congress and used the Library's resources. When a prerequisite to copyright protection was the physical deposit of the work, the Copyright Office's mission of examination and registration dovetailed nicely with the Library's mission of collection, preservation and public access. Copies sent to the Office for registration could be easily passed to the Library for potential inclusion in the national collection. Today, the missions are not as symbiotic due to changes in technology.

The Copyright Office is essentially a customer service bureau; among its main clients are the nation's copyright holders, whose are concerned with the protection and security of their works. A key part of the Library's noble mission, in contrast, is to acquire, catalog, preserve, and make available written and other works for the public benefit. While the missions of the Copyright Office and Library of Congress are not inconsistent—both strive to further “the progress of knowledge and creativity for the benefit of the American people”—from an IT security perspective, the services they provide are fundamentally at odds when it comes to digital works, as will be discussed in greater depth later in this statement. The fact that the Copyright Office must process its digital deposits on a server operated by and shared with the Library of Congress, whose mission does not include the security and protection of copyrighted works, enhances apprehensions of a security breach. The Copyright Office should be entrusted with the responsibility of overseeing the security of digital works for the benefit of their copyright holders—and this should happen on its own dedicated and independent servers.

2. Funding

Increased funding is the first and most obvious solution to the Office's need for infrastructure improvements. This lack of funding is complicated by the Librarian of Congress's control of the Copyright Office's purse strings. The Register noted this irony in the recent hearing: the Copyright Office is able to collect fees, but has no control over what happens to those fees. The bureau overseeing the copyright system that contributes over one trillion dollars to the U.S. economy needs increased funding, and it needs authority over its own allocation of funds.

Despite the success of the U.S. copyright industries, the Copyright office has seen a 7.2% *decrease* in funding since 2010—while its workload has increased over the same period. Its current budget is \$45 million: \$28 million from the fees it collects from its customers, \$17 million from appropriations. The fees it collects do not cover the costs of the services it provides, but raising fees for individual creators is not the solution because it will deter registration. The Copyright Office needs more and better resources.

From a creators' perspective, one of the Copyright Office's most essential endeavors is its support of the Subcommittee's ongoing review of U.S. copyright law, in preparation for what we hope will become, in the words of the Register, “the Next Great Copyright Act.” The Copyright Office is

uniquely situated to serve as the hub of the copyright community during this review process. Its admirable commitment to hearing from all stakeholders, including individual creators, at public roundtables and other events, and its related policy studies and reports, will help guarantee that the copyright law revisions are calibrated to serve creators, other rightsholders and users alike in the coming decades. To this end, we ask the Subcommittee to ensure that the Office has the budget necessary to fulfill all of its registration, recordation and public policy functions.

3. Status and Authority of the Copyright Office

As a society of writers, we are concerned that the rights of individual creators are being overlooked by the courts. Recent decisions concerning mass digitization and fair use underscore these worries. (We refer, of course, to the two related cases brought by the Authors Guild, *Authors Guild v. Google* and *Authors Guild v. HathiTrust*, both of which led to district court decisions holding that mass digitization of library holdings could be permitted under fair use.) The Copyright Office is the only agency in the U.S. government that specifically serves the interests of authors, among other stakeholders. Other federal agencies that address intellectual property rights are primarily focused on the interests of businesses. But copyrighted works are now a key part of our economy, and they would not exist if not for authors. As authors' rights and their ability to make a living increasingly come under attack from many directions, they are in greater need than ever of representation within the federal government—for the benefit of the nation as a whole.

a. Copyright Office Independence

The position of the Copyright Office within the Library of Congress served both bureaus well at the Office's inception nearly 120 years ago. Originally, and for much of the duration of the arrangement, there was a symbiotic relationship between the entities. But that is no longer the case; and the growing importance of the copyright industries to our nation's economy, as well as the increasing complexities of copyright law, require Copyright Office independence.

Technologies have moved faster than legislation. It may not be practical for Congress to legislate effectively for the long term on technology-specific matters, such as the safe harbors for online service providers, mass digitization and other mass uses, orphan works, digital first sale, updating library and archives exceptions, small claims, and determining when a work is published, and when it is performed or distributed, or otherwise made available. As we have seen again and again, as soon

as technology-related laws are adopted, technology changes, and how the law should be applied to those new technologies is not always clear. The Copyright Office could play an important role in interpreting the law and creating guidelines. Accordingly, the Copyright Office should be given independent agency status with the authority of an expert agency to provide guidance on complex copyright issues.

Moreover, the political status and power of the Copyright Office should reflect the importance of the copyright system to the U.S. economy. As discussed above, the Copyright Office is not an independent government agency and is not considered part of the executive branch. This creates some redundancy in the government and complicates federal copyright policy. Further, none of the other agencies that have the ability to affect copyright policy, including the U.S. Patent and Trademark Office, an agency of the Department of Commerce, or the office of the Intellectual Property Enforcement Coordinator, created in 2008, specialize in the copyright system and how it serves individual creators, to the potential detriment of the copyright system at large.

Last, one of the more important policy functions of the Copyright Office is the promulgation of copyright regulations. Yet, oddly, these remain subject to the approval of the Librarian of Congress, who is not required to have any copyright expertise. On certain bedrock contemporary issues such as mass digitization and security protocols, the digital era has driven a wedge between the interests of libraries and rightsholders, as recent cases and controversies about mass digitization, library preservation and orphan works have shown. The Copyright Office is in part a customer service bureau; its clients are the nation's copyright holders, whose main concerns are the protection and security of their works, and users of those works. Libraries, on the other hand, are interested in inexpensive access to works and ease of distribution as a way to fulfill their own noble mission of preservation and public access. Although we are not aware of any conflict to date, the divergence of missions argues against keeping the power to set copyright policy with the Librarian of Congress.

Conclusion

For the reasons above, the Authors Guild recommends that Congress act to establish the Copyright Office as an independent government agency and that the Register be given two years to solicit recommendations as to its most fitting place in the government structure. In the meantime, we ask that the Subcommittee do its best to secure in the federal budget the funds necessary for the Office

to perform its statutory duties with the authority and efficiency its customers expect, including the necessary technological upgrades and independence, so that our copyright laws continue to fulfill their function: to incentivize and reward creative achievement.



**Statement For The Record of Sandra Aistars,
Chief Executive Officer, Copyright Alliance**

**Before The House Judiciary Committee
Subcommittee On Courts, Intellectual Property And The Internet**

Copyright Office Oversight

November 17, 2014

The Copyright Alliance is a nonprofit, nonpartisan membership organization dedicated to promoting the ability of creative professionals to earn a living from their creativity. We represent the interests of creators and copyright owners across the spectrum of creative disciplines.

Copyright is the foundation for a thriving and ever expanding market of cultural, educational, and scientific works, one that in 2012 contributed over one trillion dollars to the U.S. economy and directly employed 5.4 million workers.¹ Within the copyright ecosystem, the Copyright Office plays a pivotal role not only in the registration of creators' works and the recordation of documents pertaining to those works, but also aiding in the development of copyright policy. Given the ongoing and rapid changes in the information, entertainment, and technology sectors, the Copyright Office is more important than ever in ensuring that creators and copyright holders have access to critical services that support their artistic and economic endeavors, including the creation and dissemination of works to the public, facilitated by the largest database of copyright information in the world. Furthermore, given the global and dynamic characteristics of the copyright ecosystem, the Copyright Office must be able to rapidly adapt to ensure it is able to offer the tools and

¹ STEPHEN SIWEK, *COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2013 REPORT* 5, 10-11 (IIPA 2013).

resources that its stakeholders—which include users of copyrighted works, that is, the general public—need. Within this context, the Copyright Alliance has several recommendations to help strengthen the performance of the Office in terms of overall governance, information technology (IT), and budget and staffing that we believe will ensure the successful future operation of the Copyright Office.

Status of the Register of Copyrights and Structure of the Copyright Office

Under its current structure, the Copyright Office faces significant challenges that hinder its abilities to best serve its constituencies. Currently, the Copyright Office is housed within the Library of Congress (LOC), and the Register is appointed by the Librarian of Congress, but the Office has its own statutory authority.² As several Members of the House Judiciary Committee pointed out during the September 18, 2014 Copyright Office oversight hearing, however, the Copyright Office and the LOC have very different missions, and there may be other ways to position the Copyright Office so that it can more effectively and efficiently carry out its particular mission. To that end, we recommend that Congress direct the Register of Copyrights to conduct an inquiry to solicit input from stakeholders and the public as to whether and how the structure of the Copyright Office should be changed, and whether it would be beneficial to further separate the Copyright Office functions from those of the LOC. Among the issues for consideration should be the ability of the Copyright Office to effectively use appropriated funds to improve its registration and recordation functions and database; upgrades to the information technology infrastructure of the Office; and the facilitation of a more rapid transition to receiving digital deposit copies under 17 U.S.C. § 408, while simultaneously ensuring that the LOC can continue to receive “best edition” copies for its archival and library needs. We also recommend soliciting public input on the placement, administration and management of the Copyright Office vis-à-vis the LOC, and the relative policy-making functions of the Copyright Office and the U.S. Patent and Trademark Office (USPTO), as well as whether to physically relocate the Copyright Office outside of the LOC. Given the ever-increasing importance of copyright law in our society, including fulfilling its constitutional mandate to promote the creation and

² 17 U.S.C. §§ 701 et seq.

dissemination of works, the public inquiry should include consideration of elevating the position of the Register of Copyrights to that of a Presidential Appointee, which would make the Copyright Office more empowered to act, as well as more directly accountable for its decisions and actions.

Information Technology

Regardless of the ultimate structure of the Copyright Office, it is of paramount importance that the Office has an advanced technology platform that supports the needs of its primary users: copyright owners and users of copyrighted works. The creative community requires user-friendly registration and recordation systems and an easily searchable registration and recordation database. Furthermore, the digital content marketplace is increasingly dynamic and requires a Copyright Office with flexible systems that can rapidly accommodate market changes (for example, many copyrightable works are born digital and should be easily registered in that format). The IT systems of the Copyright Office are intertwined with those of the broader LOC, and resolving the various issues presented by their different missions is becoming an increasing problem. The two offices each have their own unique IT requirements, which can lead to strains on resources and therefore impediments for the Copyright Office's users. An evaluation of the current administration of LOC's IT services, and how well equipped the LOC is to accommodate needs from across the organization, including those of the Copyright Office, would help identify challenges and opportunities for the future and help to position the LOC generally, and the Copyright Office more specifically, to best serve their unique constituencies.

One essential improvement from developing a dedicated IT system for the Copyright Office would be to enhance its security policies for digital works that are deposited as a part of the examination process for a registration. We also recommend the Copyright Office improve the search function for its records and registrations, including an acceleration of the importing of data during registration and recordations, as well as improvements and expansions in the data to be included in the database. In addition, the database could be further enhanced by allowing the voluntary linking of external databases to the Copyright

Office's systems, with the caveat that any external data meet quality thresholds as set by the Copyright Office.

When undergoing IT improvements, we also recommend the Copyright Office improve the reliability and functionality of its systems. We realize that some of the functions, instability, and user-unfriendly components of its systems can be attributed to the Copyright Office's IT network being tied to the LOC, when there should be an independent Copyright Office IT system, and decisions about the system should be made independently. For example, during the 2013 federal government shutdown, the LOC took its websites offline, simultaneously taking down the Copyright Office's database and registration systems, even though registrations must, by law, be date stamped upon receipt, for example, to grant standing to lawsuits or for remedies purposes.³ This closure of the online registration system was a significant disruption that caused a substantial backlog of registrations and recordations, and pushed the pendency time for such completions back significantly. Having an autonomous system would allow the Copyright Office, rather than LOC IT administrators, to make decisions that impact copyright owners and users.

Budget & Staffing

The Copyright Office's current funding structure does not allow it to efficiently serve its constituency. Among the challenges it faces are reductions in appropriated funding (appropriations that must be approved by LOCs, rather than being dedicated specifically or exclusively to Copyright Office functions, with decisions made by the Copyright Office). This has resulted in budget shortfalls to critical Copyright Office functions. With a current budget of \$45 million (\$27.9 million authorized from fee collections, and \$17.1 in appropriated funding), the Copyright Office's resources are stretched thin. Its budget has been decreased by \$3.51 million (7.2%) since 2010, and due to budgetary offsets put in place by Congress that tap into its expected reserve fund, the Copyright Office is often left without an operating cushion. Under its current fee authority from Congress, the Copyright Office is not able to collect funds for capital improvements. As a result, the Copyright Office is unable to fund an IT overhaul and thus unable to properly serve its purpose for its user

³ 17 U.S.C. §§ 411, 412.

communities. Sound public policy commands that the general public be able to access the records of copyright ownership maintained by the Copyright Office. The burden of supporting an IT overhaul, however, should not rest exclusively on those registering works or recording documents, since the Copyright Office serves both copyright owners and users of copyrighted works (as well as playing an important role in the federal government on copyright policy). Moreover, by increasing costs of registration or recordations, particularly to small and medium enterprises, or to those whose creative enterprises generate a large volume of individually copyrighted works rather than a smaller volume of relatively high value works, the purposes of the registration system may be undermined, and registrations and recordations would decrease, harming the amount, reliability and overall usefulness of data in the databases for registrations and recorded documents.

In addition to budgetary restrictions on capital improvements, we share the Copyright Office's concern regarding staffing shortages. The office is operating with nearly 80 employees fewer than its authorized full-time equivalent (FTE) ceiling of 439. As the digital marketplace grows and evolves, the Copyright Office needs to be able to attract highly capable professionals to carry out its mission. Not only does the lack of staff hinder the Copyright Office's ability to meet the expectations of its users, but it creates internal stresses: the pendency time for processing registrations and recordations continues to be of concern—the current pendency times for paper and electronic registrations are 8.2 months and 3.3 months, respectively, and recordations, which are entirely paper-based transactions take many months more. The Copyright Office is in need of more robust funding for staffing, so it can attract quality employees by offering more positions at senior level pay grades. If Congress does nothing else recommended in this submission, we strongly recommend that it address the Copyright Office's budgetary shortcomings and its resource and manpower needs to ensure the Copyright Office can continue to serve the needs of its stakeholders.

We appreciate the Subcommittee taking the time to consider our submission.

Thank you,

Sandra Aistars

Chief Executive Officer
Copyright Alliance



**Statement for the Record
of**

**Keith M. Kupferschmid
General Counsel and Senior Vice President, Intellectual Property
Software & Information Industry Association**

**To the House Judiciary Committee Subcommittee on Courts,
Intellectual Property and the Internet**

“Oversight of the U.S. Copyright Office (September 18, 2014)”

November 11, 2014

The Software & Information Industry Association (SIIA) submits these comments for the record in response to a hearing on Oversight of the U.S. Copyright Office held on September 18, 2014 by the House Judiciary Committee’s Subcommittee on Courts, Intellectual Property and the Internet. By filing these comments we hope to assist the Subcommittee in better understanding the important role the Copyright Office plays in the creation and distribution of innovative new software and information products and services, the concerns we have relating to the Office’s IT infrastructure and security, staffing and budget, and the immediate need to take steps to modernize the Office.

SIIA is the principal trade association of the software and information industries and represents over 800 technology companies that develop and market software and digital content for

business, education, consumers, the Internet, and entertainment.¹ SIIA's members range from start-up firms to some of the largest and most recognizable corporations in the world. They are leading providers of, among other things: software publishing, graphics, and photo editing tools; corporate database and data processing software; financial trading and investing services, news, and commodities exchanges; online legal information and legal research tools; education software and online education services; open source software; and many other products and services in the digital software and content industries. Software is a \$425 billion industry that directly employs 2.5 million U.S. workers and supports millions of other jobs by driving American productivity.²

SIIA's software and information members rely significantly on the copyright law to protect their investment in the creation and dissemination of their innovative new software and information products and services. They also use the copyright law as potential licensees interested in licensing the works of others and researchers interested in copyright registration and recordation data. The copyright law is therefore critical to their success and prosperity and the short and long-term success of the U.S. economy and creation of jobs.

The Copyright Office is responsible for all administrative, policy and litigation matters relating to the U.S. copyright law. It plays the essential role of registering the copyrighted works of authors and recording ownership of these works. It also plays a crucial public policy role by advising Congress on all domestic and international copyright and related rights matters and providing information and assistance to Federal departments and agencies, as well as the Judiciary on all copyright issues.³

¹ A list of the more than 800 SIIA member companies may be found at <http://www.siiainc.org/membership/membershiplist.asp>.

² Software & Information Industry Association, *The U.S. Software Industry: An Engine for Economic Growth and Employment*, Prepared for SIIA by Robert J. Shapiro, 2014 at http://www.siiainc.org/index.php?option=com_docman&task=doc_download&gid=5446&Itemid=318

³ 17 U.S.C. 701.

As the Office responsible for administering all matters relating to copyright, few other government offices are more important to the growth of creativity and commercial activity in our nation than the U.S. Copyright Office. The ability of our nation's independent creators and small and large businesses to promptly register and record their copyright interests with the Office and to obtain copyright information that enables them to license the copyrighted works of others creates new industries and high-wage jobs. The services provided by the Copyright Office are therefore critical to our global competitiveness and technological leadership.

Unlike other government offices that administer the country's IP laws, the Copyright Office resides in the legislative branch, within the Library of Congress. This current structure has created numerous challenges for the Office and its users. As explained below, the Office is significantly underfunded and understaffed and is obligated to use the Library of Congress' information technology systems, which is both antiquated and impractical in regards to the Office's underlying objectives and mission. Within the past several years especially it is proving exceedingly difficult for the Copyright Office to effectively and efficiently provide timely and effective services to its constituents. Consequently, it may be time to reconsider the present structure of the Copyright Office and consider alternatives to housing the Copyright Office within the Library of Congress if it is not possible to effectively resolve these problems under the present structure.

Information Technology Infrastructure

The Copyright Office does not have its own Information Technology (IT) infrastructure; it uses the network, servers, telecommunications, security and all other IT operations controlled and managed by the Library of Congress. This is a significant problem that needs to change going forward. The Library IT system is meant to service a library and its associated functions, not an organization like the Copyright Office, which has a very different mission from the Library and which is expected to provide services that affect the legal rights and economic interests of creators, owners, users and others who rely on the Copyright Act for their economic and creative well-being.

Because the Copyright Office relies on the Library of Congress to meet its IT needs, it often finds itself competing for resources with other departments within the Library. As the needs of these departments are more aligned with the Library, it would come as no surprise if more often than not, in a competition for IT resources, the Copyright Office finds itself drawing the short straw.

The Office needs a more advanced IT infrastructure – one that is solely dedicated to the Office and can better support the needs of its users. Its users need a more user-friendly registration and recordation system that is quickly adaptable to changes in the copyright marketplace and easily searchable across numerous data fields. SIIA's members have moved (or are moving) from distributing their products on print, microfilm and/or discs to purely digital products and services that are not distributed to consumers in physical form (*e.g.*, software available in the cloud). The Office's IT system needs to be able to quickly and effectively adapt to these marketplace changes as well as any new challenges that may be in store for the future.

As copyright registration deposits are quickly moving toward solely digital copies, SIIA members are increasingly concerned about the security of the Office's database of copyright deposits. For example, many SIIA publishers produce copyrighted test banks and solution manuals that are not published or otherwise publicly distributed. For obvious reasons, these materials are closely held by these publishers and not made available to others lightly. These publishers are required to deposit digital copies (where there are no print copies) with the Office as part of the copyright registration process. They are justifiably concerned about the security measures the Office takes to protect against accidental leakage of these works or hacking into the Office's database. Public disclosure of these test materials would not only destroy the value of the tests themselves, but also in many cases would also destroy the value and the integrity of the certification and other programs built around these tests. These concerns certainly exist(ed) in the print environment, but the ease of copying and dissemination of purely digital copies in conjunction with the risk of hacking has exponentially increased these fears.

Improvements to the Office's IT system should also take into account the need for users to access information from the Copyright Office database for various purposes, including to seek

out potential licenses as well as text and/or data mining of the Office's database for research purposes. Such improvements would require enhancing access and searchability of the database. These improvements could also have an immediate effect on various policy issues. For example, improved access and searchability of the Office's database could help address the orphan works problem, which the Subcommittee has considered in the past.

Budget and Staffing

The U.S. Copyright Office is both underfunded and understaffed, especially when one considers the impact the Office has on the U.S. economy. Since 2010, the Office's budget has dropped 7.2% or \$3.51 million.⁴ The ability of the Copyright Office to make up the budgetary shortfall through user fees is handcuffed because the Office is statutorily required to limit its fees to the costs incurred by the Office for the registration of claims, the recordation of documents, and other services. The Office may not use the money it collects from user fees for capital improvements or other investments. As a result, the Copyright Office has no money for infrastructure improvements, like an overhaul of its IT systems.

The Copyright Office is also significantly understaffed. The Office has 20% less staff than it had in 2008. This places a significant burden on the Office to accomplish its registration, recordation, policy and litigation responsibilities in a timely and effective manner. This problem will only be exacerbated once the House Judiciary Committee completes its policy review of the copyright law in 2015 and likely calls upon the Copyright Office for its expertise and assistance in determining what changes to the law, if any, would be appropriate.

The Copyright Office must be able to hire additional staff to handle these challenges. The Office needs additional lawyers in order to adequately meet the litigation and (domestic and international) policy demands faced by the Office now and in the future. As we know from the numerous copyright policy review hearings held throughout 2014 and the copyright debates taking place throughout Europe and the rest of the world, there is more interest and analysis of

⁴ *Statement of Maria A. Pallante [Register of Copyrights and Director of the United States Copyright Office] to the House Subcommittee on Courts, Intellectual Property, and the Internet* at page 8 (Sept. 18 2014).

the world's copyright laws than at any other time in our history. Copyright issues are emerging in more and more fora. And more new complex and diverse copyright issues seem to be surfacing every day. It's essential that the Office have the staff necessary to effectively address these policy challenges.

The Office also needs additional staff to adequately address its registration and recordation responsibilities. The Office currently has 360 FTEs and an authorized ceiling of 439.⁵ In recent years, this ceiling has been reduced by approximately 100 people. The registration program has been further decimated by budget cuts and retirements, which has resulted in 48 vacancies out of a staff of 180 experts.⁶ The reduction in employees has resulted in longer copyright registration pendency periods. At a time when the U.S. economy and the demand for entertainment and information products are speeding up, the Copyright Office registration process is going in the other direction.

The recordation division of the Office also faces a huge challenge. Shockingly, there are only nine employees to handle the annual filing of 12,000 recordation documents.⁷ This has resulted in a processing time of 17 months – an unacceptable lag time by any measure. It significantly affects the ability of users of the Office's services to quickly and easily locate and identify copyright owners for purposes of licensing, litigation or other reasons, which in turn can adversely affect the U.S. economy and jobs.

Perhaps the most significant staffing problem is the Office's lack of adequate IT experts. As discussed above, the Copyright Office uses the Library of Congress' technical infrastructure, including its network, servers, telecommunications and security operations. As a result, the Office has only 23 full-time employees to provide support for the existing registration system.

This budget and staffing shortfall, in conjunction with the IT challenges, described above and in Registrar Pallante's excellent testimony, creates a significant obstacle that hinders the Office

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

from efficiently and effectively serving its users. It may be time to reconsider the present structure of the Copyright Office and to consider alternatives to housing the Copyright Office within the Library of Congress if it is not possible to effectively resolve these problems under the present structure. There seemed to be broad support from the Subcommittee members to consider this option at the September 18th hearing and we think steps should be taken to further explore that possibility.

We appreciate the Subcommittee taking the time to review the SIIA submission and to further consider our concerns and recommendations.



November 17, 2014

The Honorable Howard Coble
Chairman, Subcommittee on Courts, Intellectual Property, and the Internet
U.S. House of Representatives

The Honorable Jerrold Nadler
Ranking Member, Subcommittee on Courts, Intellectual Property, and the Internet
U.S. House of Representatives

Re: IPO Statement for the Record for the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet for Hearing on Oversight of the U.S. Copyright Office, September 18, 2014

Dear Chairman Coble and Ranking Member Nadler:

Intellectual Property Owners Association (IPO) appreciates the opportunity to provide a statement for the record in response to the Subcommittee's September 18, 2014, hearing on Oversight of the U.S. Copyright Office (hereafter "the Copyright Office" or "the Office").

IPO, established in 1972, is a trade association for owners of patents, trademarks, copyrights and trade secrets. IPO is the only association in the U.S. that serves all intellectual property owners in all industries and all fields of technology. IPO advocates for effective and affordable IP ownership rights and provides a wide array of services to members, including supporting member interests relating to legislative and international issues; analyzing current IP issues; information and educational services; and disseminating information to the general public on the importance of intellectual property rights.

Rooted in the U.S. Constitution, copyrights are the engine of free expression and a significant building block of the national and global economies. They play a critical role in the creation, promotion, and dissemination of works of authorship and in sustaining large and small businesses in the information, entertainment, and technology sectors, among others. IPO agrees with the view expressed by Chairman Coble and Congresswoman Chu that "[c]reativity is at the core of our lives in 21st century America, from the software and apps we use, the videogames we play, and the books, newspapers, and journals we read to the motion pictures and television shows we watch and the music we enjoy. These define our cultural and social identities, provide for economic growth and jobs and affect our well-being in countless ways. And all are protected by copyright."¹

Congress has prescribed critical law and policy functions for the Copyright Office.² These include domestic and international policy analysis, legislative support for Congress, litigation

¹ Chu, Judy, Rep. and Howard Coble, Rep. "Creative Rights Drive Growth and Innovation." The Hill. p. 19 November 2013. Web. 09 Jun 2014. <<http://thehill.com/190830-creative-rights-drive-growth-and-innovation>>

² 17 U.S.C. § 701. "The Copyright Office: General responsibilities and organization." U.S. Federal Code. Web. 20 October 2014. <<http://www.law.cornell.edu/uscode/text/17/701>>

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		Herbert C. Wamsley	Herbert C. Wamsley

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activities; support for the courts and executive branch agencies (including significant efforts on trade and antipiracy initiatives); participation on U.S. delegations in meetings with foreign governments and private parties; attendance and participation at intergovernmental meetings and other international events; hosting copyright training for copyright officials from developing countries; and providing public information and education. The Copyright Office works regularly with the Department of Justice, the Department of State, the Office of the U.S. Trade Representative, and the Department of Commerce, including the U.S. Patent and Trademark Office. By statute, the Register of Copyrights is also a member of the interagency intellectual property enforcement advisory committee chaired by the U.S. Intellectual Property Enforcement Coordinator (IPEC).

The Office administers several important statutory licenses that manage and disperse private monies, including those pertaining to copyright owners' rights in programming on broadcast television signals that are retransmitted by cable operators and satellite carriers.

The Copyright Office also provides basic copyright information services. Last year, the Office's Information and Records Division answered hundreds of thousands of inquiries by phone and email, performed search and retrieval functions for customers involved in research and litigation, and served a substantial number of in-person visitors.

The Copyright Office's registration system and the companion recordation system constitute the world's largest database of copyrighted works and copyright ownership information.

In light of the many important functions that the Copyright Office provides, IPO recommends that when contemplating how best to prepare the Copyright Office for the demands of the 21st century, Congress should consider (1) increased staffing; (2) increased budget; (3) information technology upgrades; and (4) enhanced stature and flexibility for the Copyright Office.

(1) Increased Staffing

As a first priority, Congress should enable the Copyright Office to fill its vacancies and hire the staff it needs to carry out its important policy and legal work as well as registration and recordation functions. There is concern that the Copyright Office is understaffed relative to its many responsibilities. IPO understands the Office has lost approximately 20 percent of its staff since 2008. The current staffing insufficiency may be exacerbated if Congress places increased demands on the Copyright Office as a result of its copyright review.

As an initial matter, Congress needs to enable the Copyright Office to hire additional lawyers to handle the significant amount of policy and legal work expected of the Office. The Copyright Office has substantial and important responsibility in domestic and international policy. The Register testifies with some regularity at the request of Congress on copyright policy questions, and attorneys in both the Office of the General Counsel and the Office of the Associate Register for Policy and Internal Affairs produce significant legal analysis and studies for the benefit of Congress, IPO members and the general public. The Copyright Office works closely with Congressional offices on copyright legislation and related developments and coordinates with a wide variety of stakeholders on such issues. Enforcement and antipiracy efforts of the United

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States, which are of significant importance to IPO members, are a priority for the Copyright Office.

Lawyers in the Copyright Office's Policy and International Affairs group are also experts in foreign copyright law and the copyright treaty obligations of the United States. They serve on U.S. government delegations for bilateral and regional trade and copyright treaty negotiations between the U.S. and significant trading and copyright treaty partners. As a single but important example, currently, the Copyright Office has proven to be a valuable source for U.S. trade negotiators in the ongoing Trans-Pacific Partnership and Transatlantic Trade and Investment Partnership negotiations – especially relating to copyright and rules of origin disputes. Lawyers in the General Counsel's Office have expertise in the statutory licenses and in copyright registration and recordation practices. They also regularly assist the Department of Justice in litigation involving copyright law and policy.

The Copyright Office has noted a lack of technology professionals and registration and recordation specialists in its ranks to meet the rising needs of the 21st century. In her remarks to the Subcommittee, Register of Copyrights and Director of the United States Copyright Office Maria Pallante said "the Copyright Office has a particularly acute need for experienced copyright lawyers and technology professionals, but it also needs to attract qualified registration and recordation specialists who can be trained and promoted over time."³

The registration program currently has 48 vacancies out of a staff of 180 experts. In the recordation department, there are currently only 9 employees to cover approximately 12,000 annual paper applications for recordation. IPO understands that the understaffing has put significant pressure on the recordation office and has resulted in an extension in processing time to 17 months. To maintain the competitiveness of the U.S. copyright system, it is of paramount importance that Congress supports the burgeoning needs of both the recordation and technology divisions of the Copyright Office by significantly increasing its staffing.

Both the Copyright Office and Members of Congress have indicated that the overall lack of personnel in the Copyright Office has hindered the ability of the office to act quickly and efficiently. The staffing urgency will likely only increase with time, given that approximately 25% of current registration specialists are approaching retirement.

(2) Increased Budget

IPO believes that Congress needs to increase the budget of the Copyright Office. As Congressman Conyers said at the September 18, 2014, hearing, "Congress has cut the Copyright

³ Pallante, Maria. *Statement of Maria A. Pallante [Register of Copyrights and Director of the United States Copyright Office] to the House Subcommittee on Courts, Intellectual Property, and the Internet*. 18 Sept. 2014. Page 8.

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Office's budget, while continuing to ask the office to do even more. ...Fully funding the Copyright Office will help it perform the work we expect it to do.”⁴

The Copyright Office is underfunded for an agency with such a profound impact on the copyright communities and, in turn, the U.S. economy. For fiscal year 2014, the Copyright Office has a budget of only \$45 million, which includes spending authority in the amount of \$27.9 million (Congressional approval to spend this much from user fees), and an additional \$17.1 million in appropriated, taxpayer dollars. Since 2010, the budget has dropped by \$3.51 million, or 7.2 percent.

Under the current statutory language, the Copyright Office is limited to charging for “costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and other services.”⁵ Its fee authority does not permit the Office to collect for capital improvements or other forms of investment above the cost it incurs in the ordinary course of business. Congress should reconsider this fee authority.

IPO members have a long history as applicants who pay fees for service from another Federal agency that focuses on intellectual property, the USPTO. Traditionally, IPO members have supported paying user fees for capital improvements or other forms of investment above the actual cost of providing services.⁶ IPO has also supported periodic increases in user fees,⁷ with the caveat that such fees are available only to the agency and are not withheld, diverted for use by another federal agency, or sequestered.⁸⁹

This important caveat is especially significant given a seeming lack of transparency concerning how much of the Library of Congress's budget is dedicated to the Copyright Office. IPO was concerned to learn that the costs of the Copyright Office cannot be wholly or precisely accounted. The Office's technology is intertwined with and partially offset by the technology infrastructure of the Library of Congress, which is funded by appropriations and at the heart of

⁴ Conyers, John, Rep (MI-13). United States. Cong. House of Representatives. Judiciary Committee. Subcommittee on Courts, Intellectual Property, and the Internet. *Oversight of the U.S. Copyright Office*. 113th Congress, 1st sess. Washington, D.C. Prepared Statement.

⁵ Pallante, Maria. *Statement of Maria A. Pallante [Register of Copyrights and Director of the United States Copyright Office to the House Subcommittee on Courts, Intellectual Property, and the Internet]*. 18 Sept. 2014. Page 8.

⁶ Intellectual Property Owners Association. “Re: Full Funding for the U.S. Patent and Trademark Office.” Letter to the United States Senate. 17 February 2011. Web. Website of IPO. 10 October 2014 <http://www.ipo.org/wp-content/uploads/2013/03/2011.2.17_IPO_Funding_Letter_to_Senate_Leadership.pdf>.

⁷ Intellectual Property Owners Association. “Re: Full Funding for the U.S. Patent and Trademark Office.” Letter to the United States House of Representatives. 8 July 2011. Web. Website of IPO. 10 October 2014. <http://www.ipo.org/wp-content/uploads/2013/03/2011.06.08_IPO.Letter.To_House_Leadership.Supporting.Sect_22.IIR1249-1.pdf>.

⁸ Mikulski, Barbara Sen. (MD) and Sen. Richard Shelby (AL). “Full 2011 Funding for the U.S. Patent and Trademark Office-An Urgent Jobs Issue”. Letter to the United States House of Representatives. 24 Nov. 2010. Washington, D.C. Print.

⁹ Intellectual Property Owners Association. “Reconsideration of Whether the U.S. Patent and Trademark Office is Subject to Sequestration.” Letter to the Honorable Sylvia Mathews Burwell. 12 August 2013. Washington, D.C. Print.

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the Library's overall operation.¹⁰ A separate, distinct and transparent appropriation for all aspects of the Copyright Office, including its technology infrastructure (which will be discussed at greater length below) should commence immediately so that Copyright Office stakeholders need not fear withholding of collections or other moneys intended for the Copyright Office, or their diversion to other, unrelated Library of Congress functions.

(3) Technical Upgrades

Many of the possibilities for improving the Copyright Office's information technology systems that were raised at the hearing warrant serious consideration. Among the most important are enhancing the security of digital works deposited; adjusting the requirements of registration to accommodate the manner in which content is created and disseminated on the Internet; improving the functionality of the Office's databases and the usability of the Office's website; building on existing metadata standards that the respective copyright industries have adopted; implementing platforms and data standards that allow for business-to-business applications with programs and databases in the copyright industries or technology sectors; encouraging or requiring the use of unique identifiers of authors, owners, and discrete works; and developing an application program interface (API) that will allow interoperability with third-party registration services and databases of information about works, authors, or licensing maintained by copyright industries, new businesses, and the technology industry.

Congress should direct that any upgrades to the Copyright Office systems be done at the direction of the Copyright Office itself and not run through or by the Library of Congress. Any appropriated monies for such an upgrade should be separate and distinct from any monies that Congress appropriates to the Library of Congress overall for its technology systems.

Moreover, Ms. Pallante indicated in her testimony to the Subcommittee that outdated record-keeping and registration procedures remain a significant obstacle to the smooth running of the Copyright Office.¹¹ Additional needed improvements would include expanding the volume and nature of the information in the system and enhancing access to and searchability of the database. This would benefit rights holders and users, since the database is publicly and freely accessible. Making the registration and recordation database material easily cross-searchable and usable would help with licensing and identifying chains of title ownership.

The system also needs to accommodate online deposit and registration for works containing confidential materials such as secure tests, test banks, and solutions manuals. To enable copyright claimants to preserve the confidential nature of confidential materials, the Copyright Office regulations permit submission of partially redacted deposit copies during a special in-

¹⁰ Pallante, Maria. *Statement of Maria A. Pallante [Register of Copyrights and Director of the United States Copyright Office] to the House Subcommittee on Courts, Intellectual Property, and the Internet*. 18 Sept. 2014. Page 6.

¹¹ Pallante, Maria. United States Cong. House of Representatives. Judiciary Committee: Subcommittee on Courts, Intellectual Property, and the Internet. *Oversight of the U.S. Copyright Office*. 113rd Congress, 1st sess. 18 Sept. 2014. Washington, D.C. Testimony.

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person registration procedure at the Office headquarters in Washington, D.C. At this meeting, a registration specialist compares the full copy with the redacted deposit copy to ensure they match. The full copy is returned, and the redacted copy is retained to create an archival record. The Office does not currently have the infrastructure to permit registrants to electronically submit confidential materials and redacted deposit copies to the Office. Nor does the Office have adequate security infrastructure that would allow registrants to securely submit confidential materials without fear that they could be copied or disseminated.

The in-person meeting is the only way these materials can be securely deposited and registered. This process is costly, burdensome, and discourages publishers from registering these materials. In contrast, registrants of non-confidential works can quickly and cheaply electronically submit deposit copies to the Office. Modernizing the Copyright Office's information technology infrastructure could allow registrants to securely electronically submit works containing confidential materials to the Office.

Digitization of the deposit and registration system would represent a significant step toward modernizing the Copyright Office. IPO understands that the Copyright Office has explored digitalization reform prospects over the past two years, but has been hampered by resource and personnel shortfalls, and a lack of the technological flexibility. IPO believes that the paper-based system has reduced the interoperability of the Copyright Office. This has presented difficulties in accepting electronic deposits of works, enabling the Office to connect through metadata to major databases, and permitting filers to check on the progress of their submissions. A better "in-process" searchable website would help improve the pendency time for copyright registrations.

The removal of these impediments would be instrumental in enabling innovators to secure copyright registration. Congressman Nadler has highlighted the importance of this issue, especially drawing attention to increased pressures on the Office as a result of digital technology issues related to copyright.¹² IPO agrees that the paper-based system for recordation is an issue ripe for Congressional consideration and action.

IPO members also believe a critical function of the Copyright Office is to ensure the accuracy and integrity of the public records in its care. Copyright owners, users, and courts throughout the world rely on the accuracy of the information in these records. As Congress is considering how to bring the Copyright Office's registration system into the 21st century, it may want to look to the USPTO's patent and trademark databases as models. The USPTO requires a minimum of 99.9875% accuracy for its published patent data¹³, and U.S. and global innovators rely on the accuracy of the information published by the USPTO to spur additional innovation. The USPTO's information systems have improved over the years because of the budget, staffing, and flexibility that the USPTO has been given to build, maintain and improve the

¹² Nadler, Jerrold, Rep (NY-10). United States. Cong. House of Representatives. Judiciary Committee: Subcommittee on Courts, Intellectual Property, and the Internet. *Oversight of the U.S. Copyright Office*. 113th Congress, 1st sess. Washington, D.C. Prepared Statement.

¹³ Reed Tech Info Services, Inc. and Office of Procurement-U.S Patent and Trademark Office. Award/Contract # DOC50PAPT0410001. 8 September 2004. U.S. Legal Contract, p. 37. Print.

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systems. Intellectual property databases with high quality, reliable information are “investments” that yield significant returns to intellectual property stakeholders and society at large. Consequently, IPO believes Congress should prioritize building such systems at the Copyright Office.

(4) Enhanced stature and flexibility of the Copyright Office

IPO encourages Congress to consider whether a more efficient U.S. copyright system requires a Copyright Office that can deal more nimbly and ably with the complexity of copyright. As Congressman Issa indicated at the Sept. 14, 2014, hearing, the Copyright Office currently reports to a Federal entity that does not have the same mandate.¹⁴ Congress should continue to explore the relationship between the Copyright Office and the Library of Congress to ensure that the Copyright Office has the staffing, budget, information technology, flexibility, and autonomy it needs to meet the current and future demands of copyright owners and the public.

* * * *

IPO appreciates the opportunity to provide these comments for the record. If we may be of further assistance, please do not hesitate to contact us.

Sincerely,



Herbert C. Wamsley
Executive Director

¹⁴ “Isn’t it true that the function of the Library of Congress is to enhance and make available work to the world and United States? And yours is protection?” Issa, Darrell, Rep. (CA-49). United States. *Oversight of the U.S. Copyright Office*. 113th Congress, 1st sess. Washington, D.C. Testimony.

November 7, 2014

**STATEMENT FOR THE RECORD OF RICK CARNES, PRESIDENT,
SONGWRITERS GUILD OF AMERICA**

BEFORE THE HOUSE JUDICIARY COMMITTEE

“Future of the Copyright Office”

The Honorable Robert Goodlatte
Chairman, House Committee on the Judiciary
U.S. House of Representatives

The Honorable John Conyers
Ranking Member, House Committee on the Judiciary
U.S. House of Representatives

Dear Chairman Goodlatte and Ranking Member Conyers:

The Songwriters Guild of America (SGA), the world's longest established songwriter advocacy group run solely by and for the benefit of music creators, wishes to express its strong support on behalf of its approximately five thousand members for the Fiscal 2015 Budget Request submitted by the U.S. Copyright Office to the U.S. House of Representatives on March 5, 2014, and for the testimony of U.S. Copyright Register Maria Pallante before your Committee on the issue of Copyright Office Oversight on September 18, 2014. SGA thanks the Committee on the Judiciary for this opportunity to do so.

Moreover, SGA would like to further commend U.S. Register of Copyrights Maria Pallante on her well-reasoned Budget Statement to the House Committee on Appropriations accompanying her budget submission, explaining the Copyright Office's charge to adequately serve the needs of both the American creative community and the American public. We note especially our firm agreement with her assertion that “enhanced budgetary authority for the Copyright Office should be viewed as a public *investment* that is both prudent and sensible.” (emphasis added) Indeed, the importance of “investment” in the Copyright Office to support its role as an engine not only of enhanced American creativity, but also of financial growth and the generation of a positive trade balance, is a vital concept that must neither be overlooked nor understated.

As Register Pallante pointed out in her Budget Statement,

“[i]n terms of the U.S. economy, authors, songwriters, book and software publishers, film, television and record producers, and others depend on the copyright registration and recordation systems to protect their creative works and business interests. Based on a study released in 2013 using data from 2012, these core copyright sectors—whose primary purpose is to produce and distribute creative works—accounted for nearly 6.5% of the U.S. domestic gross product, or

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exceeding \$1 trillion for the first time. The core copyright industries also employed 5.4 million workers (4.04% of U.S. workers), and that number doubled to over 11.1 million people (8.35% of the U.S. workforce) when those who support the distribution of copyrighted works were added into the equation.”

The Copyright Office must be provided with the support that it needs to protect this crucial cultural and economic segment of the American landscape.

Copyright Office Circular 1a provides a detailed review of the extensive and important duties and responsibilities carried out by the Copyright Office in service to the American creative community. In recognition of the Committee’s close work with the Copyright Office, it is unnecessary to repeat those many critical functions in this letter. SGA would, however, like to underline the important point made by the Copyright Office in its Budget Statement concerning its expanding role in an era of intensive copyright policy review:

Congress is now involved in a particularly busy period of copyright review and possible copyright revision that is especially important and rather rare. This kind of review has not occurred for decades. The Register and the Copyright Office are playing a critical role in supporting this ongoing congressional review, and have also engaged in a multi-year effort to update and improve Copyright Office services. The Copyright Office participates in important U.S. negotiations relating to intellectual property, for example, treaties and free trade agreements, at both the bilateral and multilateral levels. The Office also works with the Department of Justice on critical copyright cases.

In her testimony before your Committee regarding Copyright Office Oversight, Register Pallante added as follows:

As Congress considers updates to the copyright law, it is possible that the Copyright Office will absorb new functions, for example with respect to statutory licenses, small claims administration, or registration policy. Discussions about the future are invigorating, but they highlight the need for a series of improvements that may be both small and large, from minor upgrades to paradigm shifts. The Copyright Office has spent the past few years identifying and discussing what form these improvements might take and how best the Office might accomplish them.

At this crucial juncture, the Copyright Office must be provided with the funds it needs to maintain its participation in the copyright revision process at the highest possible levels, while maintaining its facility to satisfy what in the private sector is referred to as “core business functions.” In that regard, the Copyright Office has noted a recent slow-down in the copyright registration fulfillment process, potentially a result of resources diverted to the utterly necessary and beneficial activities it is undertaking in furtherance of the Copyright Law revision process. The Copyright Office must be provided with the means to fulfill both of these functions, not one or the other.

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By way of example, the recent, continuing series of round table discussions successfully conducted by the Copyright Office in various cities throughout the country has been enormously appreciated by the American creative community, including the participants representing SGA. These round tables have provided a rare opportunity for working creators to convey directly to decision makers and government officials their opinions on various copyright issues, and to relate real life experiences to those who will be helping to fashion future policy. These are the types of activities and initiatives, made possible only by adequate funding, that lead to the formulation of better, more nuanced, and more effective policy recommendations. There is no reason that the pursuit of excellence in policy making should force a diminution in the quality of core services that the creative community similarly needs in order to function at its highest levels. The only answer lies in adequate funding.

Finally, SGA would like to take this opportunity to reiterate its whole-hearted support for the recent Congressional initiative that resulted in the drafting by the Copyright Office of legislation that would establish a “small claims” copyright enforcement system within the Copyright Office. In an era in which copyright infringements are epidemic, while the cost of bringing copyright enforcement litigation hovers at over a quarter of a million dollars per action, creators have been left with no practical ability to enforce their rights. The carefully crafted legislative proposal offered by the Copyright Office would create within its purview an adjudicative section known as the “Copyright Claims Board,” which would oversee the resolution of disputes between plaintiffs and opt-in defendants. This is exactly the type of fair and practical solution that the creative community needs to sustain itself, and exactly the type of “investment” in Copyright Office funding that would positively serve both the creative community and the public. SGA encourages Congress to move forward in support of this new proposal at the earliest possible time, and to provide the Copyright Office with the funding it needs to fulfill the mandate of the statute once enacted.

In sum, SGA believes that one of the most important components necessary to the fulfillment of the Constitutional imperative to “promote the progress” of science and the arts in America is a strong, well-funded US Copyright Office. In order to fulfill its true potential for encouraging authorship, facilitating the dissemination of creative works, and fostering commerce in the global marketplace, the Copyright Office needs to be better funded and more robustly staffed. Consistent with Register Pallante’s September 18th testimony before your Committee, Congress should clarify further that the Copyright Office is charged with exercising certain specific executive functions that are separate from the role of the Library of Congress in the legislative branch, and therefore deserving of greater budgetary autonomy.

For nearly a century and a half, the Copyright Office has served the needs of the American creative community, providing timely and important core services the successful continuation of which is tied directly to adequate funding. Many of us also recall how former Register Barbara Ringer served as an indispensable leader in helping

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Congress to fashion the world's first modern Copyright Act in 1976, a role that Register Pallante and her staff are fulfilling today at the threshold of this new era of revision.

In order to continue properly satisfying these multiple mandates, and indeed expanding its services for public benefit, the U.S. Copyright Office requires *investment*. By doing so, Congress will likewise be investing in American creators, in American culture, and in the American economy.

Thank you, Mr. Chairman, for this opportunity for SGA to make its position on this important issue known to the Committee.

Sincerely,

Rick Carnes
President
Songwriters Guild of America

MOTION PICTURE ASSOCIATION OF AMERICA, INC.

SUBMISSION FOR THE RECORD

**BEFORE THE HOUSE JUDICIARY COMMITTEE SUBCOMMITTEE ON COURTS,
INTELLECTUAL PROPERTY, AND THE INTERNET**

HEARING ON COPYRIGHT OFFICE OVERSIGHT

NOVEMBER 14, 2014

The Motion Picture Association of America, Inc. (“MPAA”) is pleased to provide this statement as part of the record of the Subcommittee’s hearing on Copyright Office Oversight, held September 18, 2014. The MPAA is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. The MPAA’s member companies are: Paramount Pictures Corp., Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corp., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. These companies and their affiliates are the leading producers and distributors of filmed entertainment in the theatrical, television, and home-entertainment markets.

The motion picture and television industries support 1.9 million jobs across all 50 states and contributed \$111 billion in total wages in 2012, the most recent year for which data is available. The protections afforded by copyright law enable the MPAA’s member studios to tell the stories that audiences enjoy both in the United States and around the world. The U.S. Copyright Office plays a vital role in administering that law and in ensuring that both the legislative and other branches of the federal government receive the best possible advice on copyright matters.

The MPAA greatly appreciates the hard work and dedication of the Copyright Office, from Register Pallante down through its staff. It has become increasingly clear in recent years,

however, that the Office is not optimally funded and positioned to address its increased workload and the challenges it faces in this era of rapid change, both in technology and in the business practices in the industries it serves.¹ Below we briefly set forth two broad areas that we urge the Subcommittee to further examine as it seeks to maintain the Copyright Office's ability to meet the challenges of the twenty-first century.

REGISTRATION AND RECORDATION

The MPAA's members are large-volume users of the Copyright Office registration and recordation systems, which secure copyright protection for their content, and provide constructive notice of their rights, as well as priority between conflicting transfers of rights. Such protections are vital to the MPAA members' ability to, among other things, conduct transactions, secure financing, and to fight piracy. The MPAA member companies also rely heavily on the Office's hard-copy public records and online database in searching for and conducting business involving the copyrights of third parties. As such, we appreciate the Copyright Office's attention to improvements in the current registration and recordation systems for our members, and also for the general public who use or rely on them and their associated database.

However, it has become apparent that the Office does not currently have adequate resources to administer these systems in a timely and effective manner. As Register Pallante noted in her testimony before the Subcommittee, it currently takes the Office on average 8.2 months to process paper registration applications, and 3.3 months for electronic applications. Moreover, the Copyright Office's registration records are not fully digitized, and those electronic

¹ The duties of the Copyright Office are many. In addition to administering the registration and recordation systems, it: undertakes major policy studies; administers rulemakings including the triennial rulemaking under § 1201 of the Digital Millennium Copyright Act; advises Congress on copyright issues; provides advice and assistance on copyright issues to other federal departments and agencies; and participates in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright. *See generally* 17 U.S.C. § 701.

databases that it does maintain are relatively rudimentary, lacking the robust functionality that is typical of today's commercial database systems, and covering registrations only from 1978 forward.² The problem is more acute in the recordation system, where the current average processing time is around 17 months, and (with one minor, recent exception) documents must be submitted entirely on paper—more or less the same way as when the recordation system first launched in the late nineteenth century—and those documents are not searchable or accessible online.

Much could potentially be done to improve the registration and recordation systems and their associated databases. Basic web site functionality could be improved. Additional staff could be hired to reduce processing delays. The Office could implement application program interfaces (“APIs”) to facilitate direct, computer-to-computer communication between copyright owners and the Office, which would eliminate the need for data re-entry, thereby increasing efficiency and reducing the potential for error. APIs would also allow for the development of third-party applications that could interface seamlessly with the Copyright Office in much the same way that various tax preparation software tools enable communication with the Internal Revenue Service's e-file system. Such APIs could also potentially facilitate appropriate connections between the Copyright Office database and databases maintained by private registries, such as the performance rights organizations' databases of musical works. Among the many benefits that would flow from improved databases is a reduction in the population of orphan works, improved connectivity between potential licensees and copyright owners, greater accuracy of search results, faster and more efficient data recovery, and valuable digital preservation of older and historical data that might be lost as time passes.

² See <http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?DB=local&PAGE=First>

The solution to the problems noted above is clear: The Copyright Office needs additional resources, both IT and examiner staff. As Register Pallante noted in her testimony, the Office's staff has shrunk significantly in recent years; the registration program alone currently has 48 vacancies out of a staff of 180, and a full one-quarter of the remaining staff is approaching retirement. On the IT side, the Office relies on the Library of Congress for its resources, and it must compete with other departments within the Library, many of which have widely differing interests. While we recognize that this Subcommittee does not itself appropriate funds, it does have an oversight role over the Office, and our hope is that highlighting these issues will give them additional prominence and lead all involved to advocate that the Copyright Office obtain the resources necessary to fulfill its many important duties.

STRUCTURAL ISSUES

Some of the Office's challenges stem from a simple lack of resources. But others are the result of its unique position as an entity that administers the law—traditionally an executive branch function, *see Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Board*, 684 F.3d 1332, 1341-42 (D.C. Cir. 2012)—yet is located within the legislative branch, as a division of the Library of Congress, operating under the supervision of the Librarian of Congress. *See* 17 U.S.C. §§ 701-02. The time is now ripe for a serious discussion about whether the Copyright Office should remain housed within the Library, or whether it would be more appropriately placed within executive branch, or made an independent agency. MPAA takes no position at this early stage whether such a move is warranted, or, if so, where within the government the Copyright Office should land. But we do believe that Congress would benefit from taking a close look at these issues, and, with input from the Copyright Office and other stakeholders as to the pros and cons of various potential scenarios, arrive at a conclusion that best serves the Office's various

mandates, which include: administering the copyright law; creating and maintaining public records of copyright ownership through registration of claims and recordation of documents pertaining to those claims; providing technical assistance to the Congress and to executive branch agencies; and serving as a resource to the domestic and international copyright communities.³

There are various potential benefits to relocating the Copyright Office within the government's administrative structure, including increasing its prominence and stature; providing it with an independent budget adequate to meet its staffing and IT requirements; and eliminating some of the inherent tension between an agency that administers a copyright system and yet is overseen by a library, which has a very different mission that includes making copyrighted works available to the public.⁴

CONCLUSION

We thank the Subcommittee for the opportunity to provide this statement, and welcome the opportunity to examine issues related to modernization of the Copyright Office in the next Congress.

³ See <http://www.copyright.gov/circs/circ1a.html>

⁴ One example of such tension is the process by which registrants must submit "deposit copies" of their works. The Copyright Office requires deposit copies so that examiners can review works to determine whether they qualify to be registered. See 17 U.S.C. § 408. The Library, on the other hand, desires deposit copies for traditional library/archive purposes. *Id.* § 407. Because the two categories of deposits are used for such different purposes, it may make sense to have different standards for each, especially in the digital environment; for example, examiners reviewing a work simply to see whether it qualifies to be registered likely do not need access to the "best edition" of such work. See *id.* § 408(b). An examination of the deposit copy issue is particularly timely for the motion picture industry, which is rapidly shifting from distributing its works to theatrical exhibitors on 35 millimeter film to "Digital Cinema Packages," digital copies of movies stored on hard drives.

